

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

4 SHERRY SHELBY \* 4:16-CV-01549  
5 V. \*  
6 BOXER PROPERTY \* 9:17 A.M. to 5:06 P.M.  
7 MANAGEMENT CORPORATION \*  
8 APRIL 8, 2019

9 BENCH TRIAL  
10 BEFORE THE HONORABLE KEITH P. ELLISON  
11 Day 1 of 8 Days

12 APPEARANCES

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ALSO IN ATTENDANCE:

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Ms. Barbara Michaelis  
Ms. Lauren Hafner  
Mr. Rodney Hale  
Mr. Alex Kakhnovets  
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**DAY 1**  
**(Bench Trial)**

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1 **PROCEEDINGS**

2 THE COURT: Keep your seats. Good morning.  
3 Please be seated. Good morning and welcome. We will  
4 begin by taking appearances of counsel, starting with the  
09:16:56 5 plaintiffs.

6 MS. WILLS: Good morning, Your Honor. Rhonda  
7 Wills on behalf of the plaintiffs. I have with me my  
8 co-counsel, Patrick Raspino.

9 THE COURT: Welcome.

09:17:08 10 MS. VALDERRAMA: Teresa Valderrama on behalf of  
11 Boxer Property Management Corporation.

12 MR. RAMIREZ: Mauro Ramirez, Boxer Property  
13 Management Corporation.

14 THE COURT: We received the pleading yesterday  
09:17:22 15 concerning damages and attorneys' fees. Do you want to  
16 say anything further?

17 MR. RAMIREZ: Your Honor, we would like to  
18 present our arguments on that motion.

19 THE COURT: Okay. Please be seated.

09:17:33 20 MR. RAMIREZ: Thank you, Your Honor. The  
21 defendant is moving to dismiss all evidence of damages and  
22 the damages computation presented by defendants under  
23 Rule 37. The short of it is that it was not until six  
24 months after the close of discovery that the plaintiff  
09:17:49 25 disclosed the full extent and nature of their claims in

1 this lawsuit.

2 The plaintiffs' claim, as has been articulated at that  
3 point and has been included in their proposed pretrial  
4 findings and what they are asking this Court to decide, is  
09:18:05 5 that Ms. Shelby worked 70 hours every single week over a  
6 91-week period and that she has evidence to represent and  
7 establish that the opt-in plaintiffs, the other ten people  
8 in this lawsuit, worked 60 weeks every single week.

9 THE COURT: 60 hours a week.

09:18:25 10 MR. RAMIREZ: 60 hours a week every single week  
11 of their respective time periods. So that is their claim,  
12 but that information was not provided to us or articulated  
13 to us until a month before this Court setting. The  
14 plaintiffs provided their initial disclosures --

09:18:41 15 THE COURT: A month? Say that again. Did you  
16 say you got it a month before?

17 MR. RAMIREZ: Yeah. We received that information  
18 on March 8th of this year.

19 THE COURT: Well, couldn't you have asked for a  
09:18:49 20 continuance at that point if you needed more time?

21 MR. RAMIREZ: Your Honor, so let me go back a  
22 bit. They --

23 THE COURT: I understand they filed it out of  
24 time. I understand that.

09:19:00 25 MR. RAMIREZ: Right. Your Honor, at that point

1 in time, this became an issue for pretrial issues, as we  
2 are here. A continuance is both inappropriate and, at  
3 this point, would not prevent the harm that has already  
4 been committed in this case.

09:19:16 5 This case has been pending for three years, just about  
6 three years. The discovery period has closed. And there  
7 is no explanation that has been provided by the plaintiffs  
8 for this late disclosure.

09:19:34 9 Under the Rule 37 analysis and the factors that the  
10 Court would consider, it's really up to the plaintiffs to  
11 explain why they felt it appropriate to withhold that  
12 information from us until six months after discovery had  
13 been closed. They did not provide us the computations  
14 that were necessary. They did not articulate their claim  
09:19:52 15 in the manner that they are trying to present it to the  
16 Court today until that point in time.

17 That prejudices the defendant. It prevented us from  
18 receiving information that is critical to the defense of  
19 this case. And we are not moving for a continuance. We  
09:20:05 20 are moving that their claims be dismissed today.

21 THE COURT: Well, but you see this on March 8th.  
22 Why couldn't you have at least let us know that you had  
23 this issue? I mean, we've blocked out the whole week for  
24 a trial.

09:20:19 25 MR. RAMIREZ: Well, Your Honor, we wanted to be

1 sure that we were prepared in order to present this to the  
2 Court. We received the information from the plaintiffs at  
3 that point in time.

4 And then last week on Monday -- we produced over  
09:20:30 5 650,000 pages in this case, and it wasn't until the  
6 plaintiffs presented their exhibit list last Monday that  
7 they identified the particular documents that they argue  
8 support the computations that they provided to us. So at  
9 that point we felt that everything had come together and  
09:20:47 10 was in a place where we were prepared with our information  
11 to present this to the Court and ask for this dismissal.

12 THE COURT: Thank you. Ms. Wills.

13 MS. WILLIS: Yes, Your Honor. First of all, I  
14 take issue with the misrepresentations that have just been  
09:21:05 15 made to the Court. There has been a pattern, frankly, of  
16 misrepresentations to the Court in this case. I won't go  
17 into all of them. But there has been a real pattern in  
18 this case of misrepresentations. I mean, frankly, just  
19 flat out fraudulent statements to the Court. The cameras  
09:21:24 20 weren't recording my clients until we showed an e-mail  
21 that indeed they were recording them. This is along the  
22 same pattern.

23 We provided disclosures back in November of 2018. So  
24 I don't -- I don't know why it is that counsel whom, to be  
09:21:39 25 honest, I have never met before today, didn't appear at

1 any of the depositions. So we provided disclosures in  
2 November of 2018 with the damages prior to that. They had  
3 an opportunity to take the deposition of Ms. Shelby and of  
4 multiple other plaintiffs in this lawsuit, pursuant to the  
5 Court's order that they be allowed to take those  
6 depositions. So they have had more than ample  
7 opportunity.

8 And when they took those depositions, Ms. Shelby  
9 testified as to how many hours per week she was working on  
10 average, as did the other plaintiffs who they deposed.  
11 They took multiple depositions in this case.

12 THE COURT: When were these depositions?

13 MS. WILLS: Early last year, Your Honor, before  
14 April, I believe, around April of last year.

15 Furthermore, Your Honor, the disclosures were simply  
16 amended to address Your Honor's findings in your summary  
17 judgment order. In your summary judgment order you made  
18 two critical findings that impacted our damage  
19 calculation, frankly.

20 One was you limited us to a two-year statute of  
21 limitations. And as Your Honor knows, we anticipated  
22 going back three years. Your Honor ruled we got two  
23 years. So we had to shave a year off of that. And  
24 frankly, that caused a lot of plaintiffs to have to drop  
25 out of the case because they were limited out by statute



1 of limitations.

09:23:13

2 Secondly, Your Honor ruled in their favor on the  
3 fluctuating workweek. We had calculated damages at time  
4 and a half, which typically the Fair Labor Standards Act  
5 allows. But in this instance, Your Honor ruled in their  
6 favor and allowed them to have halftime.

09:23:29

7 So we simply amended our disclosures to reflect Your  
8 Honor's rulings on those critical legal issues that  
9 halftime be applied rather than time and a half and that  
10 we be limited to a two-year statute of limitations rather  
11 than a three-year statute of limitations.

09:23:44

12 And those disclosures were made to them shortly after  
13 Your Honor made Your Honor's ruling in your motion for  
14 summary -- in your ruling on motions for summary judgment.  
15 So they have had this information for a very long time.

09:24:05

16 We also had a lengthy telephone conference with Your  
17 Honor where we talked about scheduling this trial; and at  
18 that time, they could have raised this issue with Your  
19 Honor. No mention was ever made of this at all.

20 THE COURT: What is it you provided on March 8th  
21 that they didn't have before?

22 MS. WILLS: This is where we reflected halftime,  
23 and we cut the statute of limitations back to two years.

09:24:19

24 And might I add, Your Honor, that they are talking  
25 about, you know, records. We relied on their pay records.

1 Those are the records. So I don't -- I don't think that's  
2 any surprise to them that we would rely on their pay  
3 records.

09:24:33

4 They had the opportunity to take the depositions of  
5 Ms. Shelby, as well as many other plaintiffs, and discover  
6 how many hours per week they were working. They have had  
7 that information now for almost a year.

09:24:50

8 Might I add, Your Honor, that this motion seems to not  
9 be brought in good faith. They filed it last night,  
10 literally the night before trial, as we were getting ready  
11 to present our case on damages to the Court this morning.

12 So again, these are last-minute tactics. It's  
13 frankly, I don't feel, being brought in good faith; and  
14 their suggestions to the Court simply are not true.

09:25:12

15 THE COURT: Okay. Thank you.

16 MR. RAMIREZ: May I respond, Your Honor?

17 THE COURT: Yes, you may.

09:25:26

18 MR. RAMIREZ: So the discovery deadline in this  
19 case was September 18th of 2018. The plaintiffs admit  
20 that they did not substantially amend or supplement the  
21 disclosure under Rule 26 for the first time until two  
22 months after the discovery deadline. At that point in  
23 time, that was the first time that they ever provided a  
24 computation of damages.

09:25:41

25 Counsel is correct that we had deposed Ms. Shelby

1 before that, and she had indicated that she may have  
2 worked 70 hours a week. However, the claim at that point  
3 was not articulated as one of 70 hours a week every single  
4 week over a 91-week period.

09:25:58 5 We took depositions of some of the other plaintiffs as  
6 well. Again, there was no articulation or explanation  
7 with respect to the extent of the hours that they claimed  
8 to have worked.

9 When the plaintiffs provided their first supplement  
09:26:13 10 to -- and they did provide initial disclosures back in  
11 October of 2016. That document provided some kind of bare  
12 recitation of the types of damages that would be available  
13 under the FLSA.

14 Fast forward to November of last year, which again is  
09:26:28 15 two months after discovery closed. We received a one-page  
16 document that has the list of the plaintiffs and has  
17 figures that they have provided totaling up to  
18 \$1.7 million for these 18 people in the lawsuit at that  
19 time. We are provided with no information related to how  
09:26:46 20 they calculated that number or the number of hours that  
21 they are claiming that underlie that calculation.

22 Fast forward to a month ago, and we receive an updated  
23 version of that document; and for the first time, the  
24 plaintiffs provided individual sheets for each opt-in  
09:27:09 25 plaintiff that listed the hours that they worked. For

1 Ms. Shelby, for example, they provided a calculation that  
2 lists the 91 weeks and has 70 hours listed for every  
3 single week. That is their claim. That is the claim that  
4 they made. But they did not provide or explain the extent  
5 of that claim until a month ago.

09:27:24

6 Plaintiffs' counsel is indicating that we took certain  
7 steps during the course of discovery in order to uncover  
8 this information, but there has been no explanation as to  
9 why plaintiffs did not provide that until a month ago. We  
10 took discovery. We deposed people. We asked for  
11 information in discovery requests. We have been before  
12 this Court before on a few discovery issues.

09:27:43

13 THE COURT: Yes, you have.

14 MR. RAMIREZ: So, Your Honor, we did what we  
15 could in order to uncover the extent of these claims; but  
16 plaintiffs did not articulate and fully explain what they  
17 were asking this Court to find until a month ago.

09:27:56

18 THE COURT: Well, I understand that that is your  
19 contention. But why do you wait until the night before  
20 trial to file a motion to dismiss? That's way too late.  
21 I mean, we are geared up and ready to go.

09:28:11

22 MR. RAMIREZ: Well, Your Honor, I feel that that  
23 puts the --

24 THE COURT: I know you think they are the  
25 wrong-doers, but that doesn't excuse you from moving

09:28:25

1 timely for the relief you want.

2 MR. RASPINO: The defendant's question is what  
3 will be done to the wrongdoer in this circumstance with  
4 respect to the late disclosure.

09:28:36 5 THE COURT: Well, if you would have filed the  
6 motion earlier, I would have happily granted a continuance  
7 because you think you have been disadvantaged by a late  
8 disclosure. I would say, you have more time to get your  
9 case ready.

09:28:48 10 Late disclosure of evidence, unfortunately, is not  
11 unusual and especially not in cases like this when you are  
12 dealing with individuals who are -- plaintiffs who are not  
13 maybe entirely familiar with the legal system.

14 I am with you that I would much, much rather see  
09:29:11 15 disclosures made on a timely basis, but I'm not sure the  
16 appropriate sanction is dismissal, especially not at this  
17 hour. I mean, do you feel unable to go forward with your  
18 case?

19 MR. RAMIREZ: Go forward?

09:29:33 20 MS. VALDERRAMA: Yes.

21 MR. RAMIREZ: Yes, Your Honor. We'll proceed.

22 THE COURT: Okay. Do you want to make opening  
23 statements or just --

24 MS. WILLS: We're prepared to make an opening  
09:29:48 25 statement.

1 THE COURT: Go ahead.

2 MS. WILLS: We need assistance from Mr. Rivera.

3 We have a PowerPoint presentation.

4 THE COURT: See if you can find him.

09:30:30 5 MS. WILLS: May it please the Court.

6 THE COURT: Counsel.

7 MS. WILLS: Good morning, Your Honor. I am  
8 Rhonda Wills. Along with my co-counsel, Patrick Raspino,  
9 we have the honor of representing today Sherry Shelby, who

09:30:46 10 is the lead plaintiff. She is also the class  
11 representative of the other plaintiffs in this matter. We  
12 also have with us three of the other opt-in plaintiffs,  
13 Barbara Michaelis, Lauren Young Hafner, and Rodney Hale.

14 This is a Fair Labor Standards Act case where there  
09:31:09 15 are violations of the FLSA, including overtime violations  
16 and failure to maintain accurate pay and time records.

17 There are critical issues that have already been ruled  
18 on by summary judgment by Your Honor that have now  
19 narrowed this case. Your Honor ruled that these  
09:31:27 20 plaintiffs were indeed misclassified as exempt when, in  
21 fact, they are nonexempt workers. And we expect that the  
22 evidence is going to show that since Your Honor made that  
23 ruling that they were misclassified, Boxer Property, the  
24 defendant, has now reclassified this position as being  
09:31:44 25 nonexempt, as it should have been all along.

1 Your Honor also ruled that the fluctuating workweek  
2 will apply and that overtime is to be calculated at  
3 halftime.

4 Your Honor also ruled that with respect to the statute  
09:31:57 5 of limitations a two-year statute of limitation will  
6 apply.

7 So the only remaining issues -- the only remaining  
8 issue to be determined by the Court in this case during  
9 this bench trial will be the issue of damages.

09:32:13 10 Based on Your Honor's ruling, there were initially 18  
11 plaintiffs. Seven of those plaintiffs now are out of the  
12 case due the statute of limitations, and there are 11  
13 plaintiffs that remain, and four of them will be  
14 testifying before the Court.

09:32:32 15 So just to give Your Honor an overview of basically  
16 what these plaintiffs did, they were leasing agents for  
17 Boxer Property, the defendant. And basically, their job  
18 was to lease commercial office space in a Boxer-managed  
19 office building.

09:32:47 20 The evidence is going to show that they were supposed  
21 to lease these office spaces the Boxer way; and the Court  
22 is going to hear exactly how stringent the Boxer way was,  
23 how many work hours that required in order to do things  
24 the Boxer way.

09:33:04 25 As a part of leasing these commercial office spaces,

1 they did tours with prospective tenants of the vacant  
2 office spaces and the building amenities; and ultimately,  
3 their goal was to obtain lease agreements with office  
4 tenants.

09:33:19 5 They were also required to maintain and cover the  
6 office. The standard office hours for the Boxer lease  
7 offices were 8:30 to 5:30; but the evidence is going to  
8 show that they worked before and well beyond those hours,  
9 based on company policies and company requirements, very  
09:33:36 10 stringent requirements.

11 Plaintiffs also had to handle a great deal of  
12 paperwork and do various other administrative tasks. They  
13 didn't have a secretary. They didn't have any sort of  
14 administrative assistants. In fact, they had to do all of  
09:33:51 15 the paperwork and all of the administrative tasks  
16 themselves.

17 They were also required to answer phone calls from  
18 prospective tenants. These phone calls would typically  
19 come into a 1-800 number and then be directed to the  
09:34:05 20 leasing offices. Some of the calls came in directly to  
21 the leasing offices; and Boxer also provided these leasing  
22 agents with cell phones that they were required to carry  
23 with them and answer 24 hours a day, seven days a week.  
24 The evidence is going to show that they had to answer  
09:34:22 25 those calls at all times.



1 They were also required to prepare ads that they put  
2 on Craigslist and these had to be updated daily, multiple  
3 times a day, well into the evening. One of the main ways  
4 that Boxer would get tenants into their buildings was to  
5 use these Craigslist advertisements.

09:34:40

6 They were also required, the evidence is going to  
7 show, to call prospective tenants and to get leads by  
8 working the phones, trying to get people in, trying to get  
9 people to see the available office space. That required  
10 them to make phone calls to prospective tenants as well as  
11 brokers.

09:34:55

12 They were also required to attend meetings and various  
13 training because Boxer was very, very stringent about  
14 leasing being done in a particular way.

09:35:09

15 In addition to that, they also had to provide support  
16 for other leasing agents. If a leasing agent didn't know  
17 how to handle something with a tenant, they were required  
18 to field questions from other leasing agents.

09:35:23

19 The evidence is also going to show that Boxer wanted  
20 to make sure that their leasing agents all did things the  
21 same way. So when a new leasing agent came on board, they  
22 would have the new leasing agent shadow a current leasing  
23 agent to see how the Boxer way was, to see how things were  
24 done.

09:35:37

25 So this is an overview of the many, many job tasks

1 that these plaintiffs had as leasing agents for Boxer.

2 Boxer Property Management Corporation basically is a  
3 company that manages commercial office buildings.

4 THE COURT: Slow down a little bit. Go ahead.

09:35:58

5 MS. WILLS: Boxer manages commercial office  
6 buildings in various markets across the country. One of  
7 the largest is here in Houston. Boxer employs all the  
8 plaintiffs or employed all of the plaintiffs as leasing  
9 agents.

09:36:09

10 They have, as I mentioned, very strict standards for  
11 leasing their office space the Boxer way. And they  
12 trained their leasing agents to lease all of their office  
13 space in a uniform manner. And the evidence is going to  
14 show that Boxer Property Management had this manual for

09:36:28

15 its leasing department. It was known by the leasing  
16 agents as the Boxer bible. In a moment, Your Honor is  
17 going to get to see some of the excerpts from the Boxer  
18 bible, which the leasing agents had to know, chapter and  
19 verse, and had to follow, chapter and verse. And because

09:36:45

20 of these very strict, onerous requirements, the leasing  
21 agents were required to work very, very long hours and to  
22 work weekends.

23 So essentially there are two questions that the Court  
24 will need to answer in this trial. There are just two

09:37:03

25 basic questions.

1 The first question is going to be, how much overtime  
2 did the plaintiffs work?

3 And then the second question is going to be, did Boxer  
4 Property know or should they have known that the  
09:37:15 5 plaintiffs were working this overtime?

6 Okay. So question one, how much overtime did the  
7 plaintiffs work?

8 The evidence is going to show that Sherry Shelby, our  
9 lead plaintiff, worked an average of at least 70 hours per  
09:37:31 10 week. The evidence is going to show that Ms. Shelby was  
11 the top performer, perhaps the top performer in the nation  
12 at various times for Boxer Property.

13 She was one of the main leasing agents that Boxer  
14 Property had new leasing agents shadow. They even flew  
09:37:49 15 people from out of town to shadow Sherry Shelby because  
16 Sherry Shelby was so good at what she did as a leasing  
17 agent for Boxer Property.

18 The evidence is going to show the other plaintiffs,  
19 the opt-in plaintiffs, also worked an average of at least  
09:38:04 20 60 hours per work.

21 The evidence is going to show that there are many  
22 weeks that Ms. Shelby worked more than 70 hours, and the  
23 opt-in plaintiffs worked more than 60 hours. So these,  
24 Your Honor, are conservative numbers that we are  
09:38:17 25 presenting to the Court.

1 None of the plaintiffs were ever paid any overtime  
2 because they were misclassified as exempt employees. They  
3 were paid a salary. They were told they weren't entitled  
4 to overtime, and they were told they had to work all the  
5 hours that Boxer required them to work in order to get  
6 this job done.

7 The evidence is going to show that Boxer Property,  
8 though, had them putting in every pay period these  
9 cookie-cutter time cards.

10 THE COURT: Now, is that something they were told  
11 to do orally or is that in the bible?

12 MS. WILLS: Which part, Your Honor?

13 THE COURT: That they were to use cooker-cutter  
14 time sheets to report only 40 hours.

15 MS. WILLS: The evidence is going to show, Your  
16 Honor, that they were told to do that. We believe that  
17 there is also going to be a video that may also show that  
18 they were told, you are a salaried employee. Just put in  
19 your 40 hours in order to get your paycheck.

20 And we're going to talk about it more, Your Honor, but  
21 sometimes this time was even put in not by the plaintiffs  
22 themselves but the leasing coordinator would put the time  
23 in. Supervisors would put the time in. I mean, they just  
24 put in 40 hours and get your paycheck. It doesn't matter.

25 You are exempt. You are not getting any overtime. It was

1 literally just a placeholder.

2 Even the national director of leasing put in 40 hours  
3 every week; and his testimony was, yeah, everybody just  
4 basically put in 40 hours.

09:39:39

5 The human resources director, the national human  
6 resources director who actually had to come down here to  
7 give her deposition, said the same thing. Yeah, we put in  
8 40 hours.

09:39:58

9 So the plaintiffs' actual work hours, though, were far  
10 beyond 40 hours. As I mentioned, Sherry Shelby, 70-plus  
11 hours a week. The other plaintiffs, 60-plus hours a week.  
12 So they were working before and after the standard office  
13 hours, which were 8:30 to 5:30.

09:40:16

14 The evidence is going to show that they worked through  
15 meal breaks, that, basically, meal breaks for these  
16 leasing agents pretty much involved either brown-bagging  
17 it or somebody running to Luby's or McDonald's and  
18 bringing something back. But ultimately, pretty much  
19 everybody eating at their desk.

09:40:30

20 Lunch was a really busy time. A lot of prospects  
21 would call in during lunch because that was lunchtime for  
22 everybody. So that was a very busy time. Tours were  
23 often scheduled during the lunch hour; and multiple,  
24 multiple calls would come in during that time.

09:40:43

25 The evidence is also going to show that they were

1 working weekends. They were required to work weekends.  
2 They were expected to work weekends. The evidence is  
3 going to show that on average they were all working at  
4 least six days a week. And the evidence is going to show  
5 that they remained on call 24 hours a day, seven days a  
6 week with those cell phones that Boxer Property gave to  
7 them and told them they had to answer at all times.

8 There is also going to be evidence of e-mails showing  
9 the late nights, the early mornings, the working during  
10 what should have been lunch and working on the weekends.

11 So there are uniform company policies in the company  
12 handbook that required these leasing agents to work more  
13 than 40 hours, what I referred to before as the Boxer  
14 bible.

15 So just to give the Court some of the excerpts from  
16 the Boxer bible, here are the leasing expectations in the  
17 Boxer bible about hours of work. Every leasing  
18 representative is expected to arrive at work on time and  
19 leave when the tasks for the day have been completed. And  
20 the evidence is going to show it would be late into the  
21 evening and sometimes well into the night before the tasks  
22 for the day had been completed.

23 It goes on to say in the Boxer bible, arrival time is  
24 at 8:30 a.m. and departure is 5:30 p.m. However, these  
25 times are subject to prospect requirements and scheduled

1 appointments, and important unexpected tasks take  
2 precedent over regular schedules. The prospect always  
3 comes first. These plaintiffs were told, you are expected  
4 to put in the time and effort required to get a lease  
09:42:30 5 signed. The leasing and management office is always open  
6 for a prospect. And the evidence is going to show they  
7 meant always open.

8 The Boxer bible also talks about the leasing  
9 expectations with respect to answering the cell phone they  
09:42:50 10 gave them and responding to e-mails and other  
11 communications.

12 Leasing calls. Leasing calls are extremely important  
13 and have the highest possible priority taking precedent  
14 over most other assignments. Leasing representatives are  
09:43:07 15 expected to answer their cell phones or reply to other  
16 leasing communications after regular business hours.

17 The evidence is going to show that meant they were  
18 supposed to take those phone calls at all times and the  
19 1-800 number would roll them right over to these leasing  
09:43:29 20 representatives, and they had to answer the call. In  
21 fact, the evidence is going to show, Your Honor, if they  
22 did not answer that call, the call would then get  
23 escalated and would go to a supervisor, and then  
24 ultimately go to the national director of leasing if they  
09:43:42 25 didn't answer the call, and they were subject to being

1 fired.

09:43:57

2 These other leasing communications that they were  
3 supposed to respond to after regular business hours were  
4 e-mails. We only have the e-mails from Ms. Shelby, but  
5 those e-mails alone will show all of the late evening  
6 e-mails, the morning e-mails, the weekend e-mails. And  
7 the Boxer bible said they were required to reply to these  
8 leasing communications, meaning e-mails, after regular  
9 business hours.

09:44:14

10 Then it says an exception would be touring or signing  
11 a lease with another prospect. Every leasing call should  
12 be viewed as a potential lease. And because of that, they  
13 had to answer these phones 24/7. The only exception is if  
14 somebody wants to do a tour or sign the lease, then that  
15 takes precedence and that needs to happen any time a  
16 prospect wants that to happen.

09:44:31

17 The Boxer bible also talks about the company's  
18 philosophy, and the company's philosophy shows their  
19 management style. Company quality standards include  
20 making themselves available to meet tenant needs at all  
21 times. Responding to emergencies may require after-hours  
22 activity and responding to nonemergencies requires an  
23 after-hour response or acknowledgment, which means whether  
24 it's an emergency or nonemergency, doesn't matter. If  
25 it's after-hours, you have got to respond. You have got

09:44:50

09:45:13



1 to acknowledge because the company's philosophy is you  
2 need to make yourselves available at all times.

3 The Boxer standards, the Boxer bible also specifically  
4 talks about weekends. So Boxer had something called  
09:45:37 5 mystery shops. And the way these mystery shops worked was  
6 someone would come in, pretending to be a prospective  
7 tenants, or they would call in pretending to be a  
8 prospective tenant. They had no way of knowing whether  
9 this was a real prospective tenant or a mystery shopper.

09:45:55 10 A mystery shopper would be wearing a wire and video and  
11 record the conversation and, when they met with them,  
12 would record the actual interaction that they had with the  
13 leasing representative.

14 And then, the leasing agent would be graded on how  
09:46:08 15 well they did with the mystery shop. And if they didn't  
16 do well, could be on a PIP, performance improvement plan,  
17 or could ultimately be terminated for not doing well with  
18 these mystery shops.

19 So Boxer told these plaintiffs about these shops and  
09:46:25 20 when these shops could happen and what these shops meant.  
21 Boxer shop. Individuals acting as prospects or tenants  
22 may call or visit the buildings at any time, even on  
23 weekends, and will make use of sound and video recordings  
24 to be sure that you are following the procedures outlined  
09:46:49 25 in this manual.

1 So Boxer put them on notice: We'll have people spy on  
2 you to make sure that you are doing things the Boxer way,  
3 that you are following the Boxer bible. And they are  
4 going to spy on you. They are going to videotape you.  
5 They are going to record you. And if you are not  
6 following the Boxer bible, if you are not doing it the  
7 Boxer way, you are subject to being fired.

8 And they told them this could even happen to you on  
9 weekends. So if you get a call on a weekend, you better  
10 answer it. If someone wants to do a tour or make a visit  
11 on a weekend, you better do it.

12 So we see this e-mail from a supervisor to the  
13 plaintiffs, and it's an e-mail in which the supervisor  
14 tells the leasing agents that they need to stay until the  
15 job is done. And, Your Honor, this is just one example;  
16 but the evidence is going to show these types of  
17 communications were sent to the plaintiffs all the time.  
18 This happened to them constantly.

19 In this particular e-mail, though, it says, we have to  
20 turn over every stone and leave no man behind. It's time  
21 to stay until the job is done and come in early. We are  
22 not in a position to be taking it easy or planning days  
23 off. On that note, don't entertain special requests  
24 regarding time off. If it is not on fire or someone is  
25 not dying, the answer is no, you may not come in late or

1 leave early. You need to stay until the job is done. We  
2 have got to turn over every stone.

09:48:35

3 And the e-mail goes on to just tell them, look, you  
4 need to start calling people, working phones, work harder,  
5 work harder. The evidence is going to show they were  
6 constantly being told this, Your Honor.

09:48:51

7 Here is an e-mail chain. This is an e-mail chain --  
8 and again, Your Honor, we only have e-mails from  
9 Ms. Shelby. In this particular e-mail chain, Ms. Shelby,  
10 our lead plaintiff, is actually talking with Lauren  
11 Hafner, Lauren Young Hafner, who is also here and will be  
12 testifying before the Court.

09:49:08

13 I'll read from the bottom up. Sherry Shelby says to  
14 Lauren Young Hafner, I'm not sure if you are getting your  
15 after-hours calls. Basically, I have gotten a couple of  
16 calls from your area over the last couple of days.

09:49:29

17 And Lauren replies to Ms. Shelby, I have had one call  
18 after 8:00 p.m. the past two evenings with no VM, meaning  
19 voice mail. Do you answer your phone that late?

20 And before Ms. Shelby can reply to her, the supervisor  
21 chimes in, the supervisor being Jerry Watson; and he says,  
22 We are on call evenings and weekends unless you have  
23 arranged for somebody else to cover for you.

09:49:51

24 So it was very clear to these plaintiffs you are on  
25 call evenings and weekends; and if your phone rings that

1 late, you better answer it.

2 Now, as I mentioned before, Your Honor, these time  
3 cards that they had them do were, basically, just  
4 cookie-cutter placeholders because they contended that  
09:50:08 5 they were exempted salaried employees. So they weren't  
6 keeping up with having them actually track how many hours  
7 they actually worked. They didn't care about that.

8 The time cards are going to show that some of the  
9 plaintiffs literally just put eight hours, eight hours,  
09:50:24 10 eight hours, and totaled 40 hours a workweek. Others put  
11 in cookie-cutter time 8:00 to 4:00, 8:00 to 4:00, 8:00 to  
12 4:00.

13 THE COURT: They had to list the hours they  
14 showed up and the hours they left?

09:50:37 15 MS. WILLS: It doesn't, Your Honor. It's just  
16 40 hours. Some of them literally just have eight hours  
17 down. It just shows eight hours. I'll show the Court  
18 some examples in just a moment.

19 THE COURT: I thought there was -- earlier there  
09:50:47 20 was evidence they had to be there 8:30 to 5:30.

21 MS. WILLS: Well, that just shows you, Your  
22 Honor, that these time cards meant nothing. They just  
23 meant nothing. Typically, the time cards had the exact  
24 same start time and end time on the hour every day; and  
09:51:03 25 some of them literally just said eight hours.

1 THE COURT: Okay.

2 MS. WILLS: Management knew that these time cards  
3 were inaccurate. They knew it wasn't really tracking  
4 their actual hours that they worked. These were literally  
09:51:17 5 just placeholders. In fact, some of these time cards  
6 weren't even filled out by the plaintiffs. The leasing  
7 coordinators would do them or supervisors would do them.  
8 It didn't matter who did them because they really didn't  
9 mean anything. They didn't really reflect anything about  
09:51:31 10 when they were actually working.

11 So here is an example of time cards being filled out  
12 by the leasing coordinator. This is an e-mail from Lauren  
13 Reis, who was the leasing coordinator. She is sending  
14 this to Sherry Shelby, our lead plaintiff, Ms. Shelby.  
09:51:50 15 And Sherry Shelby, she says to her, I have already filled  
16 in the time cards, meaning the leasing coordinator is,  
17 like, don't worry about the time cards. I have already  
18 handled those. And Sherry Shelby just replies, You are  
19 the best. I have so much trouble with that every time.  
09:52:05 20 Thank you. And the evidence is going to show --

21 THE COURT: What is ADP?

22 MS. WILLS: ADP is their timekeeping system, Your  
23 Honor. And this happened all the time. You know what, I  
24 don't have time sheets for people. I'm just going to go  
09:52:19 25 put the 40 hours in.

1 The evidence is going to show that this happened all  
2 the time. And they were well aware of it and they just  
3 put in the 40 hours just like the leasing coordinator  
4 said, hey, don't worry about it. I have already filled in  
5 the time cards, taken care of them.

09:52:35

6 Here are some examples, Your Honor, of Sherry Shelby's  
7 time cards, the entries for October of 2014; 8:00 a.m. to  
8 4:00; 8:00 a.m. to 4:00; 8:00 a.m. to 4:00, just Monday  
9 through Friday.

09:52:51

10 Rodney Hale, February 2015, same thing, 8:00 a.m. to  
11 4:00; 8:00 to 4:00; Monday through Friday.

12 We see the time cards for Barbara Michaelis, and it  
13 just has eight hours. It doesn't even have times. It  
14 just has eight hours every day, just eight hours, eight  
15 hours. And they actually called it salary work, hours  
16 worked, eight hours, just eight hours every day.

09:53:10

17 We have the same thing for Lauren Hafner. Just eight  
18 hours every day. Just eight hours.

19 This is Betty Jean Larson. She is the director of HR.  
20 And during her deposition I asked her about these  
21 cookie-cutter time sheets, and Your Honor actually asked  
22 her a question about it as well. This is what she had to  
23 say.

09:53:31

24 "QUESTION: So every single day, every single entry  
25 has 8:00 a.m. to 4:00 p.m.; is that correct?

09:53:45

1 "ANSWER: Yes.

2 "QUESTION: Every single day has exactly eight hours;  
3 is that correct?

4 "ANSWER: That's correct.

09:53:58

5 "QUESTION: And every single start is exactly on the  
6 hour of 8:00; is that right?

7 "ANSWER: That's what the time sheet says.

8 "QUESTION: And every single stop time is precisely  
9 4:00 p.m. every day; is that correct?

09:54:11

10 "ANSWER: That's what the time sheet says, yes.

11 "QUESTION: Do you really believe, as a director of  
12 human resources, that it is realistic to have a time sheet  
13 showing 8:00 a.m. on the dot to 4:00 p.m. on the dot every  
14 single day? Do you believe that that is realistic as  
15 being an accurate reflection of time worked?

09:54:32

16 "ANSWER: In this time system, no.

17 "QUESTION: So then clearly what you have in front of  
18 you is an inaccurate time sheet, correct?

19 "ANSWER: I have in front of me what Ms. Shelby  
20 entered in her time sheet.

09:54:47

21 "QUESTION: Objection. Nonresponsive. What you have  
22 in front of you, ma'am, is an incorrect time sheet. It's  
23 inaccurate, isn't it?

24 "ANSWER: It may be.

09:54:57

25 "QUESTION: So if I understand correctly, under ADP

1 the time for every single person every single day is 8:00  
2 to 4:00; is that correct?

3 "ANSWER: If I recall correctly, which I may not.

09:55:13

4 "QUESTION: And Mr. Hale's time sheets also show what  
5 time every single workday?

6 "ANSWER: 8:00 a.m. to 4:00 p.m.

7 "QUESTION: Is it fair to say that the time sheets for  
8 all of the leasing representatives say 8:00 a.m. to 4:00  
9 p.m. every day?

09:55:33

10 "ANSWER: Without looking at them, I cannot give you a  
11 definitive answer.

12 (Inaudible.)

13 "ANSWER: I would assume so.

09:55:44

14 "QUESTION: So is it your testimony, Ms. Larson, that  
15 the time that is entered at the start of the day is not a  
16 reflection of the actual time that they start working?

17 "ANSWER: They do not enter time when they start the  
18 day.

09:56:00

19 "QUESTION: And so the same would be the same for the  
20 end of the workday. They don't enter time when they end  
21 their workday either, do they?

22 "ANSWER: No, they do not."

23 (End video.)

09:56:09

24 So we have it straight from the director of human  
25 resources that these time sheets, basically, are useless.



1 They admit it. She is the person in charge of human  
2 resources at this company and has been, the evidence is  
3 going to show, since 2014, which is the relevant time  
4 period here. And during that entire time period the  
5 director of human resources has admitted that these time  
6 sheets that they kept did not reflect the start times that  
7 these plaintiffs started working and did not reflect the  
8 end times of when the plaintiffs ended their workday.

9 So we have, Your Honor, evidence that is going to show  
10 that this defendant, this company failed to maintain  
11 accurate time records for their workers.

12 So the second question that Your Honor will need to  
13 answer is, did Boxer Property know or should they have  
14 known that the plaintiffs were working overtime?

15 We believe that the answer to this is going to be an  
16 unequivocal yes; and I'll just go over some of the ways,  
17 Your Honor, that they knew or should have known.

18 We believe the evidence is going to show, number one,  
19 we have this practice of these cookie-cutter time sheets  
20 which we have just gone over with the Court. So they  
21 knew. They knew, yeah, these time sheets aren't  
22 reflecting the time that they started and the time that  
23 they ended work.

24 We have also just gone over various company policies,  
25 the Boxer bible, what the Boxer expectations were, that

1 they had to answer calls at all times, that, yeah, if you  
2 get a call after 8:00 p.m., you better answer the phone.  
3 If somebody wants to do a tour or prospect wants to meet  
4 with you or somebody wants to visit after-hours, before  
09:57:47 5 hours, on the weekends, yes, you are expected to do that.  
6 That is the most important thing. You have to keep  
7 working until the task is done. Those company policies  
8 certainly should have put them on notice of the long hours  
9 that their employees were being required to work in  
09:58:04 10 leasing.

11 We also have cell phone records. Again, we have  
12 limited cell phone records. We have cell phone records  
13 for Ms. Shelby, and those cell phone records are going to  
14 show Ms. Shelby with her company-issued cell phone having  
09:58:21 15 after-hour calls. We have the e-mail that Your Honor just  
16 saw where a supervisor stepped in and said, yeah, you  
17 better be answering your phone when Ms. Hafner, bless her  
18 heart, is, like, I'm getting these calls after 8:00. Am I  
19 really supposed to be taking these calls after 8:00? And  
09:58:37 20 the boss said, absolutely you better.

21 We also have e-mails. Again, Your Honor, we are  
22 limited in what we were given. We have the e-mails of  
23 Ms. Shelby; but those e-mails, there are many, many, many  
24 of them that we put into evidence that show these e-mail  
09:58:53 25 communications before the office opened, after the office

1 closed, during what should have been a mealtime, on  
2 weekends. So we have these e-mail communications, and we  
3 have a directive in the Boxer bible that they were  
4 expected to respond to these leasing communications, even  
5 if they were after hours.

09:59:12

6 We also have something that, Your Honor, the evidence  
7 is going to show, one of them anyway, that this is a  
8 company that loved to monitor their employees. Oh, these  
9 folks loved to monitor these people and keep tight tabs on  
10 them to make sure they were doing things the Boxer way.

09:59:29

11 They had this nationwide system called Lync. And the  
12 evidence is going to show that the way this Lync system  
13 worked was it was like an Outlook Messenger system. And  
14 every leasing representatives that worked for the company  
15 nationwide, all the supervisors, the head of leasing,  
16 everybody had to be logged in to Lync when they were  
17 sitting at their desk.

09:59:45

18 And Lync was the supervisors could look and see who  
19 was logged in to Lync; and if you weren't logged in to  
20 Lync, the supervisor would call you and say, I see you are  
21 not logged in to Lync. What is going on? And through  
22 Lync they could communicate with all the other leasing  
23 representatives across the country. And everyone could  
24 see with every leasing agent across the country who was on  
25 and who wasn't. All the supervisors could see this. The

10:00:01

10:00:18

1 director of leasing could see this. So at all times,  
2 Boxer could see that their leasing representatives were on  
3 Lync, were at their desk, were working.

4 And, Your Honor, they had this system set up such that  
10:00:36 5 it would go idle if they didn't click on the computer  
6 every so often. So if they were away from their desk, the  
7 supervisors knew because they weren't on Lync. And Lync  
8 would show them, okay, they have stepped away from their  
9 desk. So these supervisors, this company, they knew  
10:00:55 10 exactly when these leasing representatives were working.  
11 They knew.

12 I'll skip ahead a little bit. In addition to that,  
13 Your Honor, as Your Honor has heard, they had cameras.  
14 Every single --

10:01:09 15 THE COURT: Yeah, I remember that. I remember  
16 that.

17 MS. WILLS: Every single leasing representative  
18 had a camera on their desk; and at all times the  
19 supervisor, the nationwide director could go into that  
10:01:18 20 camera and see if they were sitting at their desk or not.  
21 So when they went on Lync, if they didn't see them active  
22 on Lync they could go on the camera and say, hmm, I don't  
23 see them on Lync. I'm looking at the camera. I don't see  
24 them sitting at their desk. So that's how they kept up  
10:01:35 25 with where they were.

1 They also had a system called Salesforce, another way  
2 for them to monitor these leasing representatives.  
3 Salesforce was where they had to put down or were supposed  
4 to put down when they had tours, when they were meeting  
5 with prospects, all their schedules.

10:01:49

6 So the supervisor could see, okay, it's 7:00 to 8:00  
7 p.m. they have a tour with this prospective tenant. They  
8 would see the name of the company. And so they knew at  
9 all times when they were going to be doing tours, when  
10 they had appointments, when they were sitting at their  
11 desk, when they were on line, when they were working on  
12 their computer. They were able to monitor this at all  
13 times.

10:02:05

14 And as I mentioned before, they also had these mystery  
15 shoppers which could come in at any time and spy on these  
16 leasing representatives. They never knew when they were  
17 going to show up, and they would video and audio record  
18 them.

10:02:18

19 This was a company that kept tight tabs on their  
20 leasing representatives. At a minimum, they should have  
21 known, but we believe the evidence is going to show that  
22 they actually knew these long hours that they were  
23 working, Your Honor.

10:02:29

24 So here is just one e-mail that we have pulled that is  
25 an example of the monitoring that this company could do of

10:02:44

1 its leasing representatives. This is an e-mail for the  
2 direct supervisor Rodney Hale, one of the plaintiffs, who  
3 is here with us today. And this happened on a Friday  
4 evening when Mr. Hale was going to be leaving for vacation  
5 with his family and he was going to be out on vacation  
6 with his family the following week.

7 So here is how the e-mail reads. The supervisor says  
8 at 4:45, I logged into the cameras on Boxer central and  
9 both Rodney's offices located at 13201 and 13831 were  
10 empty. So the supervisor is going on the camera, looking  
11 at both offices that Mr. Hale works at, and on the camera  
12 she sees it's 4:45. I don't see him at his desk.

13 She said, The lights were out. The computer was  
14 inactive. Then she says, Rodney's last-scheduled  
15 appointment in Salesforce was a lease signing from 2:00  
16 p.m. to 3:00 p.m. So then she went into Salesforce to  
17 check on when he was supposed to be doing a tour.

18 So she is using Salesforce. She is using the cameras;  
19 and when she is saying his computer is inactive, she is  
20 really referring to the Lync system because that's the way  
21 she could tell if he was working on his computer or if it  
22 was inactive.

23 Then she goes on to say, Then I tried calling him  
24 several times, 5:05 p.m., 5:11 p.m., and 5:15 p.m. with no  
25 response. So now she is using a company-issued cell

1 phone, and she is calling him on the company-issued cell  
2 phone. And she makes three rapid calls: 5:05; 5:11;  
3 5:15. Does not answer his phone.

10:04:41 4 So then she uses the next tool that Boxer has for  
5 monitoring the sales representatives. She sends him an  
6 e-mail which -- at 5:11, which he was supposed to respond  
7 to because it doesn't matter. You have to always respond  
8 to the e-mails. And he did not respond.

10:04:56 9 And apparently he didn't respond within four minutes  
10 because then she said, at 5:15, I checked Lync. This is  
11 where she goes on to the Lync system. And Lync showed  
12 that he had been away from the system for an hour. So the  
13 supervisor was able to go into Lync and see when was the  
14 last time he was working on his computer.

10:05:14 15 This was a company, Your Honor, that could monitor  
16 their employees across the country. They had all the  
17 tools in place. They knew these long hours they were  
18 working. At a minimum they should have known. These  
19 folks kept tight tabs on their leasing representatives.

10:05:33 20 And again, I would like to show the Court a brief clip  
21 from Betty Jean Larson, who is the director of human  
22 resources; and it's very clear from the director of human  
23 resources that Boxer Property knew that their leasing  
24 agents were working overtime.

10:05:49 25 "QUESTION: Who is in charge of human resources at

1 Boxer Property?

2 "ANSWER: I am.

3 "QUESTION: Is it fair to say that leasing  
4 representatives were required to work whatever hours they  
5 needed to work in order to perform their leasing duties?

10:06:00

6 "ANSWER: Yes.

7 "QUESTION: And so it's fair to say that leasing  
8 representatives, if they needed to work past 5:30 in order  
9 to lease an office space, that was something they were  
10 expected to do in accordance with Boxer Property  
11 standards?

10:06:18

12 "ANSWER: Yes. I think that's a fair statement.

13 "QUESTION: Would you agree with me that this training  
14 that they were given under the Boxer Property way and the  
15 Boxer Property standards, if they needed to be at the  
16 leasing office on a weekend in order to lease an office  
17 space, that was something they were expected to do?

10:06:31

18 "ANSWER: Yes."

19 (End video)

10:06:48

20 So, Your Honor, we believe that the two questions that  
21 the Court needs to answer: One, how much overtime were  
22 they working? We believe we are going to be able to put  
23 on evidence to show a minimum of 70 hours a week for  
24 Sherry Shelby, a minimum of an average of 60 hours a week  
25 for the others, and we believe the question of whether or

10:07:04



1 not Boxer Property knew or should have known the evidence  
2 is going to show they unequivocally either knew or they  
3 certainly should have known

10:07:15

4 THE COURT: Okay. All right. Thank you very  
5 much.

6 MS. VALDERRAMA: May it please the Court.

7 THE COURT: Yes, ma'am.

8 MS. VALDERRAMA: We're going to be a little more  
9 low tech than our colleagues.

10:07:33

10 THE COURT: That's fine.

11 MS. VALDERRAMA: However, I would ask my  
12 colleague to put up Exhibit 81 and the attachment, which  
13 is Exhibit A.

10:07:47

14 When my colleague, Mr. Ramirez, was talking about the  
15 damages and the disclosures in this case, this is the  
16 document that we received that for the first time  
17 identified the amount of money specifically that was being  
18 asked for. And that's the first page of the Exhibit A.

10:08:03

19 If you scroll down Exhibit A, you see for the first time  
20 where the plaintiffs actually lay out.

21 (addressing Ms. Galindo) Can you zoom in on it a  
22 little bit so we can see it more clearly?

23 This is for Ms. Shelby herself. You can see that  
24 there is a statement that hours worked per week are 70.

10:08:21

25 And then there is a calculation that appears for the first

1 time where the plaintiffs apparently have done whatever  
2 they need to do and they are identifying the amount that  
3 is owed.

10:08:35 4 And then, if you take a look at that document, you see  
5 that there are 70 hours that are claimed for every week  
6 for that particular plaintiff.

7 (addressing Ms. Galindo) And, Samantha, if you can  
8 roll it down. Keep going.

9 For every plaintiff there is a similar statement.  
10:08:51 10 Below Ms. Shelby you can see the hours that are claimed  
11 for every single week is 60. So the plaintiffs have  
12 identified that there are 70 and 60 hours per week that  
13 these individuals worked; and it's for each of the  
14 plaintiffs, including each of the plaintiffs that are  
10:09:04 15 sitting here at this table and who are going to testify as  
16 to --

17 THE COURT: What is true of each of them?

18 MS. VALDERRAMA: I'm sorry?

19 THE COURT: What is true of each of these  
10:09:12 20 plaintiffs?

21 MS. VALDERRAMA: The plaintiffs who are sitting  
22 at the table also are going to testify, we assume, that  
23 they each worked 60 hours per week.

24 THE COURT: All right.

10:09:21 25 MS. VALDERRAMA: Now, after the opening statement

1 there are a couple of things that come to mind. First of  
2 all, you either will love or hate Boxer Property. You  
3 either want them as your property manager because they are  
4 so attuned to detail and they have what they call the  
5 Boxer bible. It's actually called the Boxer Management  
6 Style. It's a guideline to ensure that there is  
7 uniformity for their individuals to work across the United  
8 States.

9 And in that Boxer bible what you'll find is that there  
10 actually is some instruction; and you'll recall that the  
11 argument was that these plaintiffs, Ms. Shelby, knew they  
12 were supposed to follow this Boxer bible to a T. Well, in  
13 this Boxer bible you will find that there are actual  
14 instructions about how a person is supposed to maintain  
15 their time records.

16 And if you get to exhibit -- that would be 13, this is  
17 difficult to read, Your Honor.

18 (addressing Ms. Galindo) If we can zoom in.

19 There is a list here for the employees who are exempt  
20 employees. It essentially tells them that they are  
21 supposed to record their hours worked. They are supposed  
22 to put in the actual hours worked and it's preferable to  
23 do it on a time basis. It also states that they are not  
24 supposed to be working from home. Employees are not  
25 supposed to be working from home.

1 And why is that important? Well, I'm sure that when  
2 you look at the Exhibit 81, which was the disclosures that  
3 showed these hours, it must come to the Court's mind, as  
4 it did to the mind of all of us, is how do you hit  
5 70 hours a week? What does that require for a person to  
6 work 70 hours a week?

7 THE COURT: Well, how does this fit with the  
8 notion that you are supposed to respond to telephone calls  
9 at all hours? How is that consistent with not working  
10 from home?

11 MS. VALDERRAMA: Answering telephone calls was  
12 not from home, Your Honor. You could pick up your phone  
13 calls whenever they came in, if they came in, by having  
14 your phone with you but --

15 THE COURT: If you are at home at the time,  
16 that's not working from home?

17 MS. VALDERRAMA: No. That's just carrying a  
18 phone with you. Working from home would mean that you are  
19 taking your work home and trying to do some of your normal  
20 business from home. Telephone calls are a separate thing.  
21 You just have your phone with you. You answer it if you  
22 need to. And I'll get to that in response to lay out our  
23 case on this point.

24 The first thing that's most important is that there is  
25 this claim for 70 hours and 60 hours. In order to achieve

1 a 70-hour workweek, Ms. Shelby would have to work 13 hours  
2 every day and five hours every weekend. Each of these  
3 other plaintiffs would have to work -- to hit 60 hours a  
4 week they would have to work 11 hours per day and five  
5 hours every weekend. That is what they have asked the  
6 Court to pay these plaintiffs for.

7 Now, there was, I'm sure, some perception from the  
8 Court that there is an eight-hour entry that's entered  
9 into every single time card that is filed by any of these  
10 plaintiffs. If we could take a look at Exhibit 12,  
11 please.

12 THE COURT: Well, why were there time sheets  
13 required at all if Boxer's notion was these are exempt  
14 employees?

15 MS. VALDERRAMA: There are lots of reasons to  
16 have time cards, Your Honor, for exempt employees; and  
17 that was a question that was never asked, of course.

18 The reason to have time cards is that in order to  
19 maintain a paid time off system for exempt employees, you  
20 need to be able to track what hours they work. That is  
21 one reason why you need to have those employees log their  
22 hours.

23 A second reason why it's important for Boxer -- and,  
24 of course, this is per Boxer. For Boxer to have those  
25 hours logged is because under the Family Medical Leave

1 Act, even for exempt employees, you have to be able -- on  
2 an hourly basis be able to monitor the time that's  
3 required for employees and to see whether they are hitting  
4 the numbers under the law that are required.

10:13:32 5 And then finally, Boxer Property Management  
6 Corporation is entitled, as an employer, to use its time  
7 records to evaluate how hard its employees are working and  
8 to assure that if you are a manager you can tell whether  
9 you have got somebody who is working too hard or somebody  
10:13:51 10 who is not working enough.

11 THE COURT: If everybody is putting in the same  
12 time every day, how does that help?

13 MS. VALDERRAMA: Well, Judge, that's the fallacy  
14 here. The plaintiffs have to prove that everybody put in  
10:14:02 15 the same time every day not because they were the hours  
16 that they worked but because that was something that they  
17 did and they weren't the hours that they worked. That's  
18 the problem here.

19 If the Court would please take a look at -- this is  
10:14:16 20 the video that trained employees on how to record their  
21 time.

22 "UNIDENTIFIED SPEAKER: As a salaried employee you  
23 clock in a little different. Let me show you how that  
24 works. First, you want to go to time management. You can  
10:14:31 25 do it here over on the left-hand side or you can click it

1 right here on this widget on the front page. So we're  
2 going to click 'web time sheet.' Now, on the old ADP time  
3 system you were able to --

10:14:42

4 THE COURT: Why don't you stop it. He is going  
5 way too fast.

6 "UNIDENTIFIED SPEAKER: -- you need to do a  
7 couple of extra steps."

10:14:52

8 MS. VALDERRAMA: Okay. If -- the significance of  
9 the video, Judge, is that -- if we could just go through  
10 the next five minutes or a few minutes. What he basically  
11 said is that you enter your time differently. He showed  
12 where you click to enter the time.

13 THE COURT: Yeah.

14 MS. VALDERRAMA: And then -- would you roll it.

10:15:03

15 "UNIDENTIFIED SPEAKER: One of them is you want to go  
16 ahead and click 'add hours'; and when you do, you are  
17 going to get this drop-down menu. And then we want to go  
18 ahead and pick the day that you want to actually clock in  
19 and put your amount of hours that you work.

10:15:13

20 "So I'm going to do Monday, 8-31. I'm going to put  
21 down 10 hours. And then I'm going to click over here on  
22 'add hours.' And as you can see, it populates right down  
23 here at the bottom ten hours of work.

10:15:28

24 "If you are someone who works a kind of a normal  
25 schedule, like eight hours a day, and you just want to be

1 able to put in eight hours for the whole week because  
2 that's what you typically do, you can also do that as  
3 well.

10:15:38 4 "You go right here to 'add hours.' And this time I'm  
5 going to do Tuesday, 9-01, to Friday, 9-04; and I'm just  
6 going to put eight hours. And so that will populate that  
7 when I hit the 'add hours.' The whole week will be  
8 populated with eight hours. You'll see that coming in  
9 here at the bottom. And there you go.

10:15:53 10 "So let's say you accidentally put in the wrong hours  
11 for something and you want to edit it. It's very simple.  
12 You just go in to where you have done it. Let's say on  
13 Wednesday I actually put in eight hours. I actually only  
14 worked seven hours. So I can click on that. That pulls  
10:16:08 15 that back up right here. I'm going to put seven hours.  
16 I'm going to hit 'update hours' and it will now populate  
17 that to seven hours.

18 "One of the other things, like with ADP, here is all  
19 your different pay periods. You have your previous pay  
10:16:21 20 period, your current pay period, and you also have your  
21 part-time pay periods.

22 "Over here is the 'add and edit comment.' If you  
23 would like to make a comment on one of your days, for  
24 whatever reason. Let's say you only worked a six-hour day  
10:16:33 25 because you had to leave early for a dentist appointment.



1 You could go in here. You could pick the day. You could  
2 say 'dentist' and then 'add comment,' and you'll notice  
3 over here under the 'comments' it's going to add a 'C'  
4 that lets your supervisor know what your comment was,  
5 which was 'dentist.'

10:16:47

6 "And that's really about it. Very similar to the way  
7 we did before, but just realize in the past you were able  
8 to just go in here and start typing. You are not able to  
9 do that in the Paycom system."

10:16:56

10 (End video)

11 All right. So as you can see, Judge, the evidence is  
12 going to show that people are instructed to put in the  
13 actual hours worked. The training video, actually the  
14 very first number that was suggested you put in was a  
15 ten-hour workday. Then there was a suggestion if you have  
16 a regular schedule, if you the employee determine you have  
17 a regular schedule, then you can go and you can do this  
18 more than once. If you have a date when you don't work a  
19 full regular schedule, it doesn't say leave eight. It  
20 says you can go ahead, and you can change the time.

10:17:25

21 That's the instruction from Boxer Property Management  
22 Corporation to its exempt employees, it's salaried  
23 employees; and it was a training video that every single  
24 one of the plaintiffs had to see.

10:17:39

25 So that brings us to the question -- I'm sure that the

1 Court reached the conclusion, having heard the opening  
2 statement from the plaintiffs, that the records that are,  
3 for example, I believe it's Exhibit 2 of the -- presented  
4 by defendants that all of those records are going to show  
5 that the plaintiff worked eight hours a day because that  
6 is the position apparently that is taken.

7 If you would take a look at the very first record --  
8 (addressing Ms. Galindo) And would you zoom in,  
9 Samantha.

10 The very first record for the time period in the  
11 two-year limitations statute -- this is Ms. Shelby's  
12 record -- you can see that there is the couple of 8.5,  
13 8.5, 8.5. So somebody made a decision in connection with  
14 entering that time that it was not just an eight-hour day  
15 but that it was an 8.5-hour day. Of course, those are  
16 Ms. Shelby's records.

17 (addressing Ms. Galindo) Can we have the next one.

18 This is a time card for a period of February of  
19 2015 -- February 1 of 2015 to February 28th of 2015. And  
20 once again, this is a time card report with notes from ADP  
21 from Ms. Shelby. If you look at that time card, you can  
22 see that, yeah, there are a couple of eights; but there  
23 are tens. There are eights. There are tens. There are  
24 nines. There are eights. There are eights. There are  
25 eights.

1 THE COURT: Yeah, I get it.

2 MS. VALDERRAMA: You can see there is a Saturday  
3 where there is four entered.

4 THE COURT: All right.

10:19:14 5 MS. VALDERRAMA: What we have here is while it  
6 was represented to this Court that there is this sort of  
7 automatic requirement --

8 THE COURT: Not too fast.

9 MS. VALDERRAMA: There is this sort of automatic  
10:19:22 10 requirement that people put in eights or that people did  
11 put in eights, Ms. Shelby's own time records contradict  
12 that. They show that Ms. Shelby made decisions to put in  
13 time that was different from eights. It might be more  
14 than eight. It might be less than eight. But certainly  
10:19:39 15 it was a choice that Ms. Shelby made.

16 (addressing Ms. Galindo) Can we have the next time  
17 card, please.

18 When they went to the new Paycom system -- that old  
19 Paycom system was -- that old system was ADP. That was  
10:19:52 20 the first system. Then they went to a new system called  
21 Paycom. And in Paycom, once again, this is a time  
22 sheet --

23 (addressing Ms. Galindo) Can you zoom it for me.

24 It's a time sheet for the time frame of December 5 of  
10:20:07 25 2015 through, I believe it is, December 19 of 2015,

1 because they have two-week pay periods. Once again, this  
2 is Ms. Sherry Shelby's time entries.

10:20:27

3 On that time card, as you can see, she has 11, 11, 11,  
4 and then she has a Saturday that has a six and then she  
5 goes on to have 11, 11, 11, and 14.

6 So the suggestion that eights were required but it was  
7 not allowed for employees to put in their actual hours is  
8 false and that is the point -- that's the first point of  
9 contention here.

10:20:50

10 We are here before the Court because we are trying to  
11 figure out, based on the Court's ruling, how much  
12 overtime, if any, these individuals worked.

10:21:08

13 Now, I know that you just listened to a very long  
14 explanation of the details and the focus of Boxer  
15 Property's work, what they expect of their -- the high  
16 standards that they have for their leasing agents. But if  
17 you paid attention to the documents that were thrown up,  
18 what was very interesting was there was only one e-mail or  
19 one reference to Lync -- of all the documents, there was  
20 only one that occurred outside of 8:30 to 5:30 hours and  
21 it was a -- it was actually an e-mail, a Lync question  
22 that occurred during work hours, and it was from  
23 Ms. Hafner to Ms. Shelby.

10:21:26

24 And she said, I got these calls with no voice mail.

10:21:47

25 Do I have to return them?

1 The date on that e-mail was 2015. So that means that  
2 the very first time that Ms. Hafner was ever contemplating  
3 that she had to answer a call after hours was on that date  
4 when she e-mailed Ms. Shelby because up until then it's  
5 very clear that she didn't think that she had to.

10:22:07

6 So if, in fact -- and then here is the other issue. I  
7 will tell you, Your Honor, that the Boxer Property  
8 Management Corporation representatives who are here, they  
9 would be delighted if their leasing agents had to answer  
10 calls more often than they do after hours.

10:22:25

11 But what is important for the Court and important for  
12 us is not that there may be a couple of calls one night a  
13 week or maybe once every two or three weeks. What is  
14 important is whether there are 20 hours of overtime worth  
15 of calls or 30 hours of overtime worth of calls for each  
16 of those plaintiffs.

10:22:47

17 That's why we are here. We are not here looking at  
18 outlying issues where there is a diminutive issue and  
19 somebody receives a call.

10:23:02

20 THE COURT: I understand.

21 MS. VALDERRAMA: Going back to the e-mail  
22 relating to Mr. Hale and the time frame of that particular  
23 e-mail. Again, that e-mail was sent during work hours;  
24 and each time that Mr. Hale was being requested to respond  
25 to his employer was during regular work hours. So there

10:23:19

1 was nothing unusual about that.

2 What was unusual is that he didn't answer by Lync. He  
3 didn't answer by telephone. And you heard how important  
4 it is for Boxer Property that a person answer their phone  
10:23:38 5 because every call could be a prospect. It could be a  
6 lease. And so the very concept that somehow Boxer  
7 Property Management Corporation is going to be held to  
8 have -- remember the issue we're talking about now is how  
9 much time these individuals worked, is that evidence that  
10:23:57 10 Rodney Hale was not at work is being presented of evidence  
11 that he worked 20 hours every week -- of every week that  
12 he was an employee there, that is just -- it's difficult  
13 to see how that could be presented to this Court for any  
14 sort of evidence that there was work done outside of the  
10:24:20 15 normal hours.

16 THE COURT: Well, I think that he was presented  
17 to show that there was regular oversight of employees'  
18 schedules and their comings and goings.

19 MS. VALDEERRAMA: Let's talk about that for just a  
10:24:33 20 minute, Your Honor. I think maybe it was presented for  
21 that. I would ask then, Judge, why then were there no  
22 e-mails and communications up here that actually show that  
23 these people were working a lot of hours or sending  
24 e-mails or being tracked down at 7:00 at night? Because  
10:24:47 25 in order to work 11 hours a day, they are going to have to

1 be working at 7:00 at night. Why is there no evidence?  
2 Why is the only evidence of tracking somebody down during  
3 the regular work hours?

4 And let's talk again about that video. When she  
10:25:01 5 initially spoke to the Court and raised one of the first  
6 things --

7 THE COURT: Not too fast now. We have got to  
8 stay up with you.

9 MS. VALDERRAMA: I'm sorry, Your Honor. It was  
10:25:10 10 one of the first things that Ms. Wills said. She said  
11 that I learned that they were, quote, recording my  
12 plaintiffs. And I'm afraid that that may be a  
13 misconception that has very much seeped into this case.

14 There is no recording with those cameras. Those  
10:25:28 15 cameras cannot tell you where somebody was the second  
16 before you look at it or the second after you look at it.  
17 It is a live stream. And it is live stream because the  
18 cameras are actually monitored by three receptionists who  
19 take calls from people who have seen this 777 Call Boxer,  
10:25:50 20 you know, rent property from us; and they say, hey, I  
21 would like to think about looking at some open space in  
22 that building.

23 So they call the corporate number; and the corporate  
24 answering service, the receptionist, they do have in front  
10:26:07 25 of them regularly these screens that are not recordings

1 but they can look at those screens and they can say they  
2 were interested in Building A; but the guy at Building A,  
3 he is out. So now I'm going to allow them to talk to  
4 somebody at Building B, who is a cover guy. If there is  
5 nobody at Building B, maybe the woman at Building C will  
6 be the right one to do.

7 That's the purpose. That's why there is no recording.  
8 They are not trying to figure out where people were or how  
9 long they were there.

10 Boxer knows that its leasing representatives, if they  
11 are doing their jobs, are not going to be at their desks.  
12 That's the only reason to have cameras there. They know  
13 they are supposed to be out doing tours. They are  
14 supposed to be out in the neighborhood. They are supposed  
15 to be out checking the buildings. They are supposed to be  
16 out selling.

17 So the long and short of it is there is no recording.  
18 So just to make sure that is straight. So when Ms. Bunyi  
19 was looking for Mr. Hale -- and I know his lawyer said  
20 that he was apparently -- we don't know this, but she  
21 indicated in her statements to the Court that he was  
22 preparing to go on vacation that weekend with his family.  
23 Well, we don't know that. And the fact that he is going  
24 on vacation that weekend doesn't mean that he is not  
25 supposed to stay at work until 5:30.



1 So that's sort of a non sequitur. It doesn't prove  
2 that he worked 11 hours that day, which he would have had  
3 to do that week if he was going to be paid by this Court  
4 for 20 hours of overtime that week, which is the claim  
5 that the plaintiffs have made.

10:27:42

6 All right. So with respect to the oversight then, all  
7 I have heard is that there is this sort of ordinary  
8 oversight. There is a valid use of a camera system for a  
9 valid business purpose that has no design to harm  
10 employees but it does have a design to assist those  
11 employees who are trying to lease their buildings and to  
12 assist those prospects who are trying to find a live  
13 person to talk to because -- I don't know how the Court  
14 feels about it, but I will tell you that I am very off-put  
15 when I call my airline and I'm trying to get something  
16 done or somewhere else and I can't talk to a live person.  
17 So it's a business decision to have it done that way.

10:28:01

10:28:18

18 And then -- so what we have is we have time sheets  
19 where employees have been instructed on how to input that  
20 time. They have been instructed to input it to match the  
21 actual hours worked. I know there was a suggestion that  
22 the Court would never see anything but eights. But in  
23 reality, we have shown you that even with the plaintiff  
24 the time sheet entries range from five hours per day to  
25 14 hours a day. She has never been -- no one has ever

10:28:40

10:28:58

1 spoken negatively to her about it.

2       However, the plaintiff testified in this case, Your  
3 Honor, that the hours she entered in her time sheets are  
4 false. She has said that those hours are false and cannot  
10:29:16 5 be relied upon because they are just not correct.

6       And that is exactly what is the issue here for the  
7 Court. All of the things that Boxer requires of its  
8 leasing agents, its leasing representatives, I know it  
9 sounded like there is a lot they have to do. But my  
10:29:42 10 assistant has a lot she has to do, and she can get it done  
11 in the time frame that's allotted for her job. The  
12 leasing representatives at Boxer Property can generally  
13 get done what they need to do within the time that's  
14 allotted for their jobs.

10:29:58 15       And the evidence is going to show that the time sheets  
16 that were entered by Sherry Shelby not only captured more  
17 than eight hours a day but they probably captured more  
18 time than she actually worked. At the very beginning of  
19 this case, during the class certification piece of it,  
10:30:21 20 Ms. Shelby signed an affidavit that said the Court could  
21 not rely on her time sheets. And that's important because  
22 she is the class plaintiff, and she is representing that  
23 those time sheets are not reliable.

24       Why would a plaintiff not want the Court to rely on  
10:30:36 25 their time sheets? Well, if the gap between what they are

1 claiming and what their time sheets entered under the  
2 proper training that they received is different, is  
3 significantly different in terms of damages, what you have  
4 is someone who is rather than allowing a case to proceed  
5 on fact, they are deliberately testifying in a matter to  
6 undermine the validity of the facts that are -- that can  
7 be validated.

8 And so the evidence in this case is going to show that  
9 all of the plaintiffs received that same training. They  
10 all followed the, quote, Boxer bible, which I will go  
11 ahead and endorse with Ms. Wills it was expected that  
12 people follow that Boxer bible. The Boxer bible told them  
13 that they should put their time in accurately.

14 THE COURT: Well, you know how these cases go.  
15 You know it better than I do. You seldom find a written  
16 instruction or a recorded instruction to violate the law.  
17 It's the kind of thing that's done by word of mouth.  
18 That, as I understood it, is what plaintiffs claim  
19 happened here.

20 MS. VALDERRAMA: That doesn't seem to be the  
21 truth here though, Your Honor, because if the instruction  
22 was to put in eights, the proof is in the pudding. Where  
23 are the eights?

24 I mean, that's the dilemma for the Court, and that's  
25 been the dilemma for Boxer all along. How do you deal

1 with a claim -- and if I may, Your Honor, I have in the  
2 old-fashioned handwritten demonstrative, if I can hand it  
3 to the Court.

10:32:12

4 THE COURT: Do you have a copy for the other  
5 side?

6 MS. VALDERRAMA: I do. I absolutely do.

10:32:35

7 The dilemma for a defendant that is trying to  
8 determine, after the Court has ruled that its leasing  
9 representatives who are in good faith after the DOL has  
10 investigated and who look, as the Court has appropriately  
11 indicated, who actually look like outside sales folks, the  
12 dilemma is what do you do with a case like that when the  
13 plaintiff says you can't rely on your records, even though  
14 you have records that are carefully -- people are  
15 carefully trained on and even though you know that the job  
16 is not nearly as onerous as the plaintiffs have to report  
17 that it is. Okay.

10:32:53

10:33:09

18 So if you look at this particular exhibit, let's just  
19 say it's a demonstrative, what you have is each of the 11  
20 plaintiffs listed on the side. And you have Ms. Shelby,  
21 who is the class plaintiff, highlighted in the yellow.  
22 And then you also have the two-year limitations period  
23 that would show what applies for each of those plaintiffs,  
24 and some of them don't have a full two years because some  
25 them their termination dates are before the end of the

10:33:25

1 two-year period.

2 So, for example, Andrea Johnson, the very last  
3 plaintiff, if you look at the total number of workweeks  
4 called, which is the fourth column over, you can see that  
10:33:40 5 Ms. Hafner, at the time this was prepared, had 187 total  
6 workweeks. Mr. Hale had 106. The plaintiff had 91.  
7 Ms. Michaelis had 49, and so on and so forth.

8 It also captures the total hours worked. It captures  
9 the total overtime hours that are reported. It goes on  
10:34:05 10 then to show that if you take that average -- and you can  
11 see that a number of the plaintiffs actually report  
12 overtime hours. Mr. Clinch reports overtime hours.  
13 Ms. Perkowski reports overtime hours. Mr. Brady reports  
14 overtime hours. Ms. Michaelis has overtime hours.

10:34:27 15 THE COURT: I've got it. I've got it.

16 MS. VALDERRAMA: And Ms. Hafner has her own  
17 overtime hours, and the plaintiff has her overtime hours.  
18 If you use the plaintiff's own overtime hours, you'll see  
19 that if you go to the column -- the 14th column, it says  
10:34:48 20 "average reported overtime weekly hours worked for the  
21 entire period" because that is the damages model that  
22 these plaintiffs disclosed to us finally. It was served  
23 on us on March 8th, and we got it a few days into the next  
24 week.

10:35:02 25 But that's the damages model that they have come to

1 court to prove, and that's their burden. They have to  
2 prove the damages model that for every week that these  
3 people were employed that we owe those plaintiffs  
4 20 hours, if it's not Ms. Shelby, and 30 hours if it's  
5 Ms. Shelby.

10:35:20

6 Now, if you take Ms. Shelby's time there and you look  
7 under the average overtime hours reported from the time  
8 sheets that she actually recorded, you can see that there  
9 is an average number of hours that are overtime hours, if  
10 you spread it out across the entire period, of 1.82 hours.

10:35:39

11 That includes those time sheets where she reported  
12 straight 11s. It includes those time sheets where she  
13 reported straight 10s. It includes those time sheets  
14 where she said she worked on Saturdays. It includes that  
15 time where she says she worked 14 hours a day.

10:36:02

16 This is the data that was turned over to the plaintiff  
17 in October of 2016. This is the data that, before she  
18 ever wrote her affidavit, Ms. Shelby knew would result in  
19 a 1.82 hours per workweek finding when she made the  
20 decision to tell the Court that those hours that are  
21 entered are wrong and that that 1.82 actual hours per week  
22 should be treated as 30.

10:36:21

23 That's why we are here, Your Honor. This is not the  
24 kind of case where a company that has records is able to  
25 simply look the other way and essentially say that, yes,

10:36:44

1 these people worked 30 hours per week when, in fact -- 30  
2 overtime hours per week or 20 overtime hours per week when  
3 the data, even the plaintiff's data, which showed she  
4 worked some extraordinary hours, doesn't result in  
5 anything close to that, frankly.

10:37:03

6 One last thing, Your Honor. As you know, Betty Jean  
7 Larson is the manager --

8 THE COURT: Yes.

9 MS. VALDERRAMA: -- of human resources. And you  
10 got to see a clip where there was a big discussion about  
11 8:00 as a start time and where Ms. Larson was, basically,  
12 grilled about whether that could actually ever be a true  
13 start time and how could you believe people would start at  
14 that time. And she honestly said, no, she didn't think  
15 people would always start at the same time.

10:37:41

16 At the very end of that clip, the very last two  
17 questions she was asked, was the only information that is  
18 relevant to this Court about that time entry. Ms. Larson  
19 was asked:

20 "So are you testifying that the plaintiffs put in a  
21 start time of 8:00, every single one of these people put  
22 in a start time of 8:00?"

10:37:56

23 And she said, "No. I don't believe they did."

24 And then she said, "Well, so are you saying they put  
25 in a finish time of 4:00?" Again, with the presumption

10:38:13

1 that it's an 8:00 to 4:00 time frame that's being entered.

2 And Ms. Larson said, "Honestly, no, I don't believe  
3 they did."

4 And what the Court is going to learn is that that time  
10:38:31 5 entry is not a time entry at all. That's an ADP fiction.  
6 It's what ADP does somewhere in order for it to be able to  
7 figure out how it's going to account for the hours that  
8 are actually logged in by the employees.

9 And if Ms. Larson had been courteously asked the  
10:38:56 10 question as to why she believed what she did, instead of  
11 their being a conclusion that because that line happens to  
12 be on every time sheet, therefore, the time sheets are  
13 false, she would have responded that that is not an entry  
14 that any of these plaintiffs will ever testify they made  
10:39:10 15 because they didn't enter it. It was an ADP entry. It's  
16 not a record of Boxer Property

17 THE COURT: Okay.

18 MS. VALDERRAMA: And that's been the problem with  
19 this case throughout, Judge. We have been upfront and  
10:39:23 20 straightforward with our evidence. We have done what we  
21 can. We provided these records from which you can get  
22 these numbers. They have been in the plaintiffs' hands  
23 since October of 2016.

24 And yet here we are still deliberating over or looking  
10:39:39 25 at a presentation of five or ten minutes of the



1 presentation about an entry on a time sheet that has  
2 nothing to do with whether these plaintiffs worked the  
3 30 hours, if you are Ms. Shelby, of overtime that they now  
4 must prove because that's their case or whether the other  
5 plaintiffs worked 20 hours of overtime per week, which  
6 they must testify to and prove under oath because that's  
7 their case.

10:39:59

8 THE COURT: Okay. Thank you very much. We'll  
9 take a 15-minute break.

10:40:11

10 MS. VALDERRAMA: Thank you, Your Honor.  
11 (Recess from 10:40 a.m. to 11:06 a.m.)

12 THE COURT: Are we ready to present any evidence?

13 MS. WILLS: We are, Your Honor. I just want to  
14 make sure we have our exhibit notebooks up here.

11:06:20

15 THE COURT: You can be seated. Do you want to  
16 call your first witness?

17 MS. WILLS: Your Honor, at this time, we would  
18 invoke the Rule.

19 THE COURT: Okay.

11:06:58

20 MS. VALDERRAMA: Your Honor, I think the Rule had  
21 to be invoked before the opening statement.

22 THE COURT: The Rule doesn't apply to opening  
23 statements.

24 MS. WILLS: Not to openings statements, no.

11:07:06

25 THE COURT: Anybody who is not an expert and not

1 the appointed designee of a corporation needs to be  
2 excused. You can -- one person from your corporation can  
3 stay.

11:07:20 4 MS. VALDERRAMA: I understand that. I have got  
5 some here. Judge, we have our general counsel who has  
6 been subpoenaed and head of HR who has been subpoenaed,  
7 and we have our head of our leasing operations, all the  
8 top executives which have been subpoenaed.

11:07:37 9 Mr. Kakhnovets is going to be our corporate  
10 representative. That's not a problem. I asked opposing  
11 counsel what her schedule was for my witnesses, and she is  
12 not able to tell me. So I'm wondering if it would be  
13 possible for them to not have to stay in the courthouse  
14 but be able to return to their office.

11:07:50 15 THE COURT: Yeah, I think so.

16 MS. WILLS: I believe so, Your Honor.

17 THE COURT: Are you going to call them as part of  
18 your case in chief?

19 MS. WILLS: We are, yes, Your Honor.

11:07:59 20 THE COURT: Can you give them a few hours notice?

21 MS. WILLS: Yes, sir.

22 THE COURT: That's fine then.

23 MS. VALDERRAMA: Thank you, Your Honor.

11:08:12 24 So Mr. Rentz and Ms. Larson, you are free to return to  
25 your office.

1 Thank you, Judge.

2 THE COURT: Okay. Do you want to call your first  
3 witness now?

11:08:25

4 MS. WILLS: One other housekeeping matter, Your  
5 Honor. Just so that we understand, especially since  
6 witnesses that we subpoenaed are being excused and I'll  
7 need to give them time to get them back. In terms of how  
8 we're going to proceed, I know that defendant's counsel  
9 and I are both calling, I believe, a number of the same  
10 witnesses.

11:08:40

11 Are these people going to have to return twice or when  
12 the witness takes the stand both sides are expected --

13 THE COURT: We can do it either way. I don't  
14 know what she will agree to. We can do it either way.

11:08:51

15 MS. VALDERRAMA: It depends. I'm sorry, Judge.  
16 It depends. Some of the information that I need to put on  
17 is not going to be ripe, and I think we want to hear the  
18 plaintiffs tell their story before we have to rebut it  
19 because --

11:09:06

20 THE COURT: Okay. That's just your choice.  
21 Okay. It will be a little bit more inconvenient for the  
22 witnesses.

11:09:17

23 MS. VALDERRAMA: At some point, on a witness  
24 basis, we may be able to simply release the witnesses who  
25 are plaintiffs, if they choose to go home.

1 THE COURT: Okay. All right. Let's go ahead and  
2 call the first witness.

3 MS. WILLS: At this time, Your Honor, we call  
4 Sherry Shelby.

11:09:25 5 THE COURT: Okay. Ms. Shelby, we'll have you in  
6 the seat nearest me. Before you take your seat,  
7 Mr. Rivera will administer the oath. Raise your right  
8 hand, please.

9 THE WITNESS: Yes, sir.

11:09:41 10 (Witness sworn by the case manager.)

11 THE COURT: Try to make yourself as comfortable  
12 as you can. Speak directly into that mic, if you would,  
13 please.

14 THE WITNESS: How is that?

11:09:49 15 THE COURT: That's good. That's good.

16 THE WITNESS: A little close.

17 **SHERRY SHELBY,**  
18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

11:09:54 20 BY MS. WILLS:

21 **Q.** Good morning, Ms. Shelby. How are you?

22 **A.** Very well. Thank you.

23 **Q.** Great. Could you please introduce yourself to our  
24 Honorable Court?

11:10:02 25 **A.** My name is Sherry Shelby.

1 Q. And, Ms. Shelby, tell us a bit about yourself, where  
2 you live, your family.

3 A. I live in the Houston Bay Area, and I am a mother of  
4 one and a grandmother of two in the real estate business.

11:10:21 5 THE COURT: Tell me, again, just briefly: Did  
6 you have any education past high school?

7 THE WITNESS: Some college, yes.

8 THE COURT: Okay.

9 BY MS. WILLS:

11:10:30 10 Q. Ms. Shelby, at some point did you go to work at Boxer  
11 Property?

12 A. Yes, ma'am.

13 Q. And what was your job title there?

14 A. Leasing representative.

11:10:40 15 Q. Were you also known as a leasing agent?

16 A. Yes, ma'am.

17 Q. And how long did you work at Boxer Property?

18 A. Approximately five and a half years.

11:10:51 19 Q. Can you give us your best estimate on your start date  
20 and end date?

21 A. I started on November 15th, 2010, and I believe that  
22 my dismissal was February 25th of 2016.

23 Q. And who was your supervisor that you reported to when  
24 you worked at Boxer?

11:11:17 25 A. At that time, Jerry Watson.

1 Q. And how long was Jerry Watson your supervisor?

2 A. I don't recall exactly the period of time, but it was  
3 a brief period of time of my tenure. And so if I was  
4 going to estimate, I would say about two or three months.

11:11:36

5 Q. And other than Mr. Watson, who were your other  
6 supervisors during the five and a half years that you were  
7 a leasing agent there?

8 A. Prior to Jerry was Alanna Vladd. And prior to Alanna,  
9 that was Dawn Eastridge.

11:11:52

10 Q. Now, who was in charge nationwide of the leasing  
11 department?

12 A. That would be Alex Kakhnovets.

13 Q. And what did Mr. Kakhnovets do?

14 A. He was national director of leasing.

11:12:06

15 Q. And what sort of interactions did you have with  
16 Mr. Kakhnovets?

17 A. Well, on several occasions we discussed that I would  
18 possibly be promoted. He would also -- he was very  
19 encouraging and complimentary in regard to my performance  
20 on a regular basis at the meetings. He pulled me aside  
21 and commented on my performance and told me I was doing a  
22 great job.

11:12:31

23 In the conversations regarding performance, do you  
24 want specifics on that or --

11:12:45

25 Q. What about at sales meetings? Did you have any

1 interaction with Mr. Kakhnovets there?

2 **A.** Yes.

3 **Q.** Tell us about that.

4 **A.** Well, generally Alex was in our meetings mostly to

11:12:55

5 observe; but for a period of time he generally would take

6 the floor for a few moments to make announcements or

7 comment on our performance from the previous month or

8 possibly directives or possibly reprimands for things that

9 we weren't doing right that he wanted to address and make

11:13:12

10 sure that we all understood to be a part of our job and

11 what our expectations were.

12 **Q.** And what, if anything, did Mr. Kakhnovets talk to you

13 and the other leasing agents about with respect to how

14 hard you needed to work?

11:13:27

15 **A.** Well, it was made very clear in the meetings by

16 Mr. Kakhnovets that we were to answer our phone calls at

17 all times.

18 It was made very clear that we were expected to meet

19 our Salesforce quotas and exceed to be able to gain our

11:13:41

20 bonuses, if that were going to be, you know, something

21 that we would receive that particular month.

22 Also, in regard to following Boxer protocol, such as

23 what the system was called the four, two, four, which was

24 the way we showed property. Four things about the

11:14:00

25 building, two things about the suites, four things about

1 Boxer on the way back to the suite, and the closing  
2 process. He was very engaged with -- with the agents.

3 **Q.** You said with the agents. So who -- who would be at  
4 these meetings where Mr. Kakhnovets talked about these  
5 things about working hard and that sort of thing?

6 **A.** Generally all of the leasing agents, unless someone  
7 had an emergency situation and could not be there, as well  
8 as the regional supervisors, Mr. Kakhnovets, and from time  
9 to time either Andrew Segal or Justin Segal may also visit  
10 the meetings to make comments or updates about things that  
11 were going on in the company.

12 **Q.** And please tell the Court who Andrew Segal and Justin  
13 Segal are.

14 **A.** Andrew Segal is the owner of this company. I'm not  
15 exactly sure at this time what Justin's -- his legal  
16 position is. I'm not sure if he is the CEO or the  
17 president of the company at this time.

18 **Q.** And when Mr. -- when the Mr. Segals were at the  
19 meetings, what sorts of things did they tell you and the  
20 other leasing representatives?

21 **A.** Two different things. One particular time they came  
22 in to tell us about one of the buildings in Dallas that  
23 had been foreclosed on. They were wanting to let us know  
24 that they had defaulted on their loan, and they were  
25 concerned that we may encounter brokers or different



1 people that might would be concerned about Boxer's  
2 security due to that. And so they wanted to give us some  
3 directives about how to respond to those questions if it  
4 came up.

11:15:40 5 THE COURT: Did Boxer own these properties or  
6 just manage them?

7 THE WITNESS: Boxer owned some of their  
8 properties, and they managed some of their properties.

9 THE COURT: The one that was foreclosed on, did  
11:15:50 10 it own and manage?

11 THE WITNESS: He did not clarify that in the  
12 meeting but he -- he insinuated that they owned the  
13 building by stating that it had been foreclosed on.

14 MS. VALDERRAMA: I apologize for having to  
11:16:02 15 object. There is no foundation that's been laid that this  
16 witness knows who owns the buildings.

17 THE COURT: Well, she is quoting an adverse  
18 party. I think that's permissible. I'm going to allow  
19 it.

11:16:14 20 BY MS. WILLS:

21 **Q.** What, if anything, did Mr. Segal, either of the  
22 Misters Segal, talk to you or the other representatives  
23 about how hard they expected you to work?

24 **A.** Well, let's just say that Boxer took great pride in  
11:16:35 25 having the best leasing agents in town. They were very

1 particular about the way we did things, as we mentioned  
2 about the Boxer management style, Boxer bible, even  
3 kiddingly they would refer to it as the Boxer bible.  
4 That's where it came from. We didn't make it up.

11:16:53 5 They were just very, very particular about everybody  
6 doing everything the Boxer way from right on to having the  
7 pen cup on your -- on your desk in the right place with  
8 the amount of pens that you could do the Boxer pen cup  
9 challenge when you turn the cup upside down the pens  
11:17:15 10 wouldn't come out. Justin would actually come in your  
11 office and make sure of that.

12 Where did your business cards go?

13 Did you have folders where you were supposed to have a  
14 certain amount of folders made up?

11:17:24 15 Did you have your floor plan book?

16 They would even go as far as they themselves would get  
17 on line on our website and make sure that we had uploaded  
18 properly every floor plan to the website. If that wasn't  
19 done properly, then we would get an e-mail from either the  
11:17:41 20 director or regional where that information had flowed  
21 down from corporate.

22 They would check what we called -- we had a system  
23 called Boxer Manager where we maintained, like, the square  
24 footages of the suites that were available, suites that  
11:17:57 25 were leased, things like that. They were constantly

1 looking at that to -- you know, making sure we were  
2 keeping those things up-to-date. That's how they would  
3 gauge part of what we did in production was to be able to  
4 look at that and see what we had available.

11:18:10 5 So there were many other things. I'm sure I don't  
6 recall every single thing that they discussed. But that  
7 and then just they would, you know, just encourage us to  
8 be sure, you know, that we always had our phones on  
9 because that was super important, that it was not

11:18:24 10 acceptable, that we were to be on call 24 hours a day, and  
11 that we would be reprimanded if we were not taking our  
12 calls.

13 **Q.** So I would like to talk a bit about the job duties and  
14 responsibilities for the leasing representatives at Boxer  
11:18:42 15 Property. I understand that the number one thing that you  
16 needed to do as a leasing representative at Boxer was to  
17 lease office space; is that correct?

18 **A.** Yes, ma'am.

19 **Q.** Could you please tell us what -- you have referred to  
11:18:56 20 this as leasing the Boxer way. Could you please walk us  
21 through what leasing the Boxer way required of you in  
22 order to lease office space at a Boxer managed property?

23 **A.** Well, it all started with the phone call. So  
24 typically a prospect would call in either from a building  
11:19:15 25 sign, potentially a Craigslist ad. Maybe they saw us on

1 LoopNet or CoStar, which are websites that, you know,  
2 commercial properties advertise their buildings in.

3 And the number one goal -- that's where it started --  
4 was to set an appointment. That was your absolute number  
11:19:33 5 one goal when you got a phone call was to get the person  
6 into the office.

7 Once you would get the appointment, you would get them  
8 into the office, typically if the appointment was set out  
9 a couple of days you would want to call them the day  
11:19:47 10 before to remind them to be sure that they were going to  
11 make it for their appointment.

12 They would come in. They would sit down. We were  
13 required to discuss a little -- have a little interview  
14 with them in regard to how many employees they had in  
11:20:01 15 their office, what type of company it was, so that maybe  
16 we could gauge possibly what type of office equipment, you  
17 know, desk space, were they going to have cubicles, did  
18 they need private offices and, you know, what type of  
19 lease, how long of a term they were looking for, and just  
11:20:19 20 kind of interview them and see what we had that might  
21 would fit their needs to make sure we were a good fit for  
22 their company. Once we would do that, we would find out  
23 what size of space they needed, based on how many people.

24 We had a book similar to this that we kept on our desk  
11:20:34 25 at all times, and we kept the available floor plans,

1 multiple copies of each suite that would be vacant at the  
2 time. And we would show them the plans before we would  
3 leave the office and say, you know, does this look like  
4 something that would work for you? We would pick out the  
5 ones that would.

11:20:50

6 Generally, Boxer really didn't want us showing more  
7 than three that was in our handbook at the time. There  
8 were times that we would and we did, if necessary, in  
9 order to close a deal. But we tried to keep it to that to  
10 minimize the decision-making process for the actual  
11 prospect.

11:21:03

12 So from that point then, we would go and we would  
13 gauge which ones they wanted to look at; and we would  
14 leave the office. The tour would actually start in the  
15 office or the appointment would start in the office.

11:21:17

16 So we would come through and just, you know, mention  
17 that the property manager is on site if they had any  
18 issues. We would exit from the office. And then we would  
19 start in most buildings -- most of the buildings had a  
20 lobby or atrium. We would want to point out all the  
21 amenities that were available in the building.

11:21:34

22 And as you are walking in the building, you are  
23 pointing out the amenities. That may be that we have a  
24 conference room or a deli or restrooms, men and women's  
25 restrooms on every floor, free parking.

11:21:48

1 Then we would graduate into the actual suite and they  
2 would want us to point out at least two things about the  
3 suite. So that might mean that we have floor to ceiling  
4 windows. We have the solar lighting that turns itself off  
11:22:07 5 and on. We may have put wood laminate. It could have  
6 been a feature of an open concept, you know, a lot of  
7 different things, depending on the suite.

8 Most of the suites all looked the same. They liked to  
9 keep all the suites the same. They called them Boxer  
11:22:23 10 standard. Until the very end of my tenure, then they  
11 started changing the decor some in some of the buildings.  
12 But even the carpet, the paint, everything was standard  
13 even throughout the building typically unless it's Boxer  
14 work style --

11:22:37 15 THE COURT: Okay. That's good enough.

16 THE WITNESS: Okay.

17 BY MS. WILLS:

18 **Q.** Okay. So after you showed them the building  
19 amenities, you showed them the available vacant office  
11:22:45 20 suites they might be interested in, what was your next  
21 step?

22 **A.** As we were walking back to the office we were to  
23 discuss four things about Boxer or about our lease. So  
24 that's when we would go into, you know, we have a very  
11:22:56 25 short lease. The actual lease is four or five pages.

1 We would talk about, you know, the 24-hour  
2 maintenance. We would talk about 24-hour access to the  
3 building. We would talk about there is no application fee  
4 for the lease. We would talk about you can sign the lease  
5 and have your keys today.

6 So we would want to make sure that we touched on at  
7 least four, you know, hot points so that we could get them  
8 back to the office to close. And at that point you were  
9 always to ask are you ready to go back to the office to  
10 sign your lease, because that's what they consider a  
11 close. If you didn't ask a tenant to come back to your  
12 office to sign a lease, then on your shop you would lose a  
13 significant amount of points.

14 **Q.** So at this point you have shown them the vacant suites  
15 in the building. So then the next step was for you to go  
16 back to your office there in the building? Is that what  
17 your goal was?

18 **A.** Yes.

19 **Q.** Okay. And what would happen if you could get them  
20 back there to your office in the building?

21 **A.** Well, at that point, we want them to sign the lease.  
22 We want to put the pressure on them. You know, this is  
23 the only one we have like this. And we were also  
24 authorized in different buildings for particular  
25 incentives to get them to sign.

1 So we may have been able to waive a deposit. We may  
2 have been able to give them a free month, and we would put  
3 that pressure on them to lead them to believe that this  
4 offer would not exist if they didn't sign right now.

11:24:18 5 So that's what our goal was, to get the lease signed  
6 before they left the office.

7 **Q.** And explain to the Court the process. If they said,  
8 Okay. Great. I need this office. I like this office. I  
9 want this office. Explain to the Court, please, the  
11:24:31 10 process of generating the lease and getting it signed.

11 **A.** Okay. So at different points in my tenure -- at one  
12 point we handwrote the leases. Later on, they actually  
13 became what they call a DocuSign system. So the contract  
14 would be in the system, and we would go in and just type  
11:24:50 15 in the information. For instance, the name of the  
16 company, their tax ID numbers or Social Security, all  
17 their pertinent information for their private company.  
18 Attaching floor plans and other addendums or exhibits that  
19 would go with the lease.

11:25:07 20 And at that point they -- we had a little sign pad or  
21 they would jump over into your seat, if your sign pad  
22 didn't work, and they would just electronically sign the  
23 lease.

24 They would write a check for their deposit and first  
11:25:22 25 month's rent, whatever was due, give us a copy of their



1 driver's license, and they could literally leave with  
2 their keys.

3 **Q.** Now, how did -- in what ways did prospective tenants  
4 find out about you guys? How did they find out about a  
5 Boxer managed building?

6 **A.** Well, most tenants if you would look at the sales  
7 reports -- when I was there, the production reports would  
8 be -- this is something they would go over in some of the  
9 sales meetings -- would be the sign on the building was  
10 the absolute number one -- the absolute number one way  
11 that we got people in.

12 And then, of course, the Craigslist ads I think some  
13 people had more production with those than others; but  
14 they were very productive in my buildings.

15 Also, local area brokers would bring clients in. And  
16 also, clients would see us on CoStar, LoopNet; and we also  
17 got referrals. We gave incentives. I believe it was a  
18 \$50 bonus or something off their rent that they got for  
19 referring someone that signed a lease with us.

20 **Q.** So if a prospective tenant was interested, would they  
21 call in?

22 **A.** Yes. Oh, they would walk in, too. Uh-huh.

23 **Q.** Well, let's talk about the calls first.

24 **A.** Okay.

25 **Q.** When calls would come in, tell the Court, please, the

1 various ways that calls might come in.

2 **A.** Well, they would either come in on the office phone or  
3 they would come in on a cell phone, on our company-issued  
4 cell phone.

11:26:57 5 **Q.** And when you say the office phone, where was the  
6 office phone?

7 **A.** On our desk.

8 **Q.** In your office there at Boxer, the Boxer-managed  
9 building?

11:27:05 10 **A.** Yes, ma'am.

11 **Q.** And where -- and so, who routed the calls to the  
12 office, or did they come directly to the office?

13 **A.** Well, we did get calls that came directly to the  
14 office; and we always speculated how that would happen. I  
11:27:19 15 don't know if that -- they would get the number off of the  
16 internet somewhere where those leads come from. But most  
17 of the time they came through the corporate office and the  
18 corporate leasing coordinators or -- I think that's what  
19 they were called. I think they were leasing coordinators.

11:27:37 20 They would take the call; and then, they would route it to  
21 whatever appropriate building it was.

22 **Q.** Once the office was closed to the public for the day,  
23 how did the calls get routed?

24 **A.** Well, they had it set up to where if you -- you were  
11:27:56 25 always on call; but you had, generally, a couple of people

1 that would be a back-up for you.

2 So, for instance, if I got a call from my building and  
3 say I was in the ladies' room and didn't grab the call,  
4 then whoever was in back-up for me, it would go and  
11:28:12 5 roll -- they wouldn't send it to my voicemail. It would  
6 roll over. Hypothetically, it would roll to the next  
7 leasing agent in line. If that person missed it, it  
8 rolled to the next. After that, generally, it would go to  
9 a supervisor; and that's when you knew you were going to  
11:28:27 10 be in trouble if it got to a supervisor.

11 **Q.** And you mentioned that your company-issued cell phone  
12 you would get calls. Is that a number that you gave out?

13 **A.** Yes, ma'am.

14 **Q.** And please tell the Court on what occasions you would  
11:28:46 15 give out your company-issued cell phone number?

16 **A.** Well, it was on our business card. And also, any time  
17 I made a call. So, for instance, if someone called in  
18 and, you know, they didn't get anyone and the coordinator  
19 put it into Salesforce and we came in the next day, we  
11:29:06 20 would call them.

21 But we would always leave our cell number for them to  
22 call back because we were moving around having  
23 appointments in the office, and we wanted to be sure to  
24 get those calls. So they would call directly to our cell  
11:29:21 25 phone or sometimes they would call back to the office

1 because they would see, you know, a missed call and  
2 potentially it would say Boxer Property.

3 **Q.** Now, you mentioned Craigslist ads. Could you please  
4 tell the Court what that is.

11:29:34

5 **A.** Yes. Craigslist is a free marketing internet website  
6 that we would post our suites and buildings on in order to  
7 attract potential prospects looking for office space.

8 **Q.** What phone number would be listed in the Craigslist  
9 ad?

11:29:52

10 **A.** Usually -- it would depend on the agent on that. Some  
11 agents did put their cell phones. Some did put the  
12 corporate number and some put both. My ads usually had  
13 both.

14 **Q.** And how frequently were the leasing agents required to  
15 post Craigslist list-outs?

11:30:10

16 **A.** Well, we were -- we were required to have a minimum of  
17 100 at the time when I was there. However --

18 THE COURT: 100 for how long?

19 THE WITNESS: A month, yes, sir.

11:30:25

20 THE COURT: All right.

21 THE WITNESS: However, part of our potential  
22 subjective bonuses would be based on the persons that did  
23 the highest performance. So in order to get in that range  
24 where you could possibly get any kind of bonus, you would  
25 have to get up to probably around 600 or more. At one

11:30:42

1 point it got up to around a thousand ads.

2 BY MS. WILLS:

3 **Q.** Per month?

4 **A.** Yes. That the agents were posting to get the bonus.

11:30:54

5 **Q.** And explain to the Court then, in order for you to do  
6 a thousand Craigslist ads a month, please explain to the  
7 Court the frequency with which you were having to do  
8 Craigslist postings?

11:31:10

9 **A.** Part of the issue with Craigslist, it won't  
10 continuously let you post at one time. It will think it's  
11 a spam or something. So you had to gradually do them.  
12 You couldn't just boom, boom, boom, boom put in 100 and be  
13 done with it in 20 minutes. It's like you could put in  
14 one ad and then in a minute or two you could put in  
15 another. So it was a quite lengthy of a period of time.

11:31:26

16 So generally in the evenings, you know, I would have  
17 to sit and, like, watch TV or something and actually sit  
18 there and post ads because you couldn't sit there and do  
19 it all throughout the day.

11:31:47

20 **Q.** And what were the office hours during which the  
21 leasing office was generally open?

22 **A.** Well, the door says 8:30 to 5:30.

23 **Q.** And in actuality, though, how -- what hours was the  
24 office open?

11:32:08

25 **A.** The office is always open, according to Boxer. So if

1 you were in that office, if you got there at 7:30 or 8:00,  
2 the office was open.

3 **Q.** And how about in the evenings? How late would the  
4 office stay open in the evenings?

11:32:23 5 **A.** Again, if you were there, it was open. So if I was  
6 there at 8:00 and a tenant or prospect came in, I was  
7 expected to show space.

8 THE COURT: So you are open as long as there was  
9 an agent there? Well, it wasn't open when no one was  
11:32:41 10 there, right?

11 THE WITNESS: Well, if no one was there, they  
12 would call us still. As they said, we were expected to do  
13 tours potentially.

14 THE COURT: But if nobody was calling an agent  
11:32:50 15 for a tour and no one was in the building, the building  
16 was locked up, wasn't it?

17 THE WITNESS: Yes, sir. That's correct. Yes,  
18 sir.

19 BY MS. WILLS:

11:32:58 20 **Q.** And were there any administering of duties that you  
21 had for working in the office, just sort of paperwork or  
22 administrative duties?

23 **A.** As far as processing the leases? We were -- we kept  
24 stringent requirements on the leasing files even though we  
11:33:17 25 were -- there at the very end of my tenure, we were

1 transitioning to what they were trying to do is a  
2 paperless system; but it actually was creating more paper  
3 than the non-paper system.

11:33:32

4 So a lot of the times, at the end of the day, after  
5 you had been touring your own appointments all day, you  
6 would have to spend, you know, an hour or two at the end  
7 of your day just trying to stack your files and get your  
8 paperwork in order because you would have to send that to  
9 the corporate office, along with the check.

11:33:47

10 **Q.** And what sort of paperwork are you referring to?

11 **A.** The leases, the addendum, the exhibits, the driver's  
12 license information, the application, the contact sheets,  
13 all the tenant information that was provided.

11:34:07

14 **Q.** And were there any other office requirements that  
15 Boxer had in terms of how you were required to maintain  
16 the lease office space?

11:34:24

17 **A.** Yes. Every office was required to be the same. So  
18 your business cards, your pen cups, your brochures for the  
19 buildings, everything had to be in the same place at all  
20 times. Everyone had -- we weren't allowed to have  
21 anything on our desk except a computer, a pen, no  
22 post-its, very, very stringent. If they walked in and  
23 your office was not considered a Boxer standard, you could  
24 be written up for that.

11:34:39

25 **Q.** And with respect to these brochures, who prepared the

1 brochures?

2 **A.** We did.

3 **Q.** When you say "we," are you talking about the leasing  
4 representative?

11:34:47 5 **A.** Yes, ma'am.

6 **Q.** Tell me what went into preparing those brochures?

7 **A.** Depending on your portfolio of buildings, generally  
8 you would put a copy of your lease, a copy of, like,  
9 brokerage services that identified us as licensed agents,  
10 your business card, your building brochures, and any other  
11 potential incentives that they may have going on at that  
12 time. Sometimes they would have flyers or something  
13 printed up for people that would refer and different  
14 things.

11:35:03 15 **Q.** You have talked a lot about meeting with prospects and  
16 touring the Boxer-managed building that you worked in with  
17 them. How many times did you have to meet with or tour  
18 with a prospect before they signed a lease?

19 **A.** You know, that actually -- it varied. There were  
11:35:40 20 times that we would tour one time, and that would  
21 typically be on, say, a small office, like a one-room  
22 office. Those people generally were able to make  
23 decisions much quicker than people that would have  
24 anything over a one-person company.

11:35:55 25 But with people that had something over that size, it



1 usually -- always you had to tour multiple times because  
2 they had to make big decisions. Is this going to work?  
3 Sometimes they had to bring other people, you know, within  
4 the company back to look at the space also. Sometimes  
5 they had a broker that would come before and then bring  
6 the client.

7 So I have had people that I toured, you know, multiple  
8 times, multiple times on multiple, multiple occasions.

9 **Q.** And once a lease was signed, was there ever a  
10 build-out for the vacant office space?

11 **A.** Yes.

12 **Q.** Who handled the build-out of the office space?

13 **A.** If it was for a prospect that was coming in, then that  
14 would be something that we would do.

15 **Q.** Would that be the Boxer construction person?

16 **A.** No. The leasing representative. We would actually  
17 talk with the agent or, excuse me, with the prospect about  
18 what they needed done.

19 So, for instance, if you were looking at a space with  
20 the prospect and they said, you know, this space would be  
21 perfect but that one wall is a problem, I need this wall  
22 knocked out between these two rooms, then we would sit  
23 down on the floor plan and we would, you know, put that  
24 information in. It was seven or eight layers of  
25 information.

1 And then we would send it to corporate to the  
2 construction department. And then the construction  
3 department would finalize the plans. And then they would  
4 also do the -- submit for the permits and handle the  
5 management of the construction.

11:37:29

6 **Q.** And who was communicating with the tenant through this  
7 process?

8 **A.** During -- before they signed the lease?

9 **Q.** After they signed the lease.

11:37:40

10 **A.** Generally after they signed the lease, sometimes the  
11 leasing representative would communicate, but sometimes it  
12 would be the property manager. So it would just depend on  
13 the circumstances.

14 **Q.** And were there meetings between the tenant and the  
15 construction department about their build-out?

11:37:55

16 **A.** Not unless -- usually unless it was a really big  
17 build-out; but if it was a small job, it usually wasn't  
18 necessary for them to actually go meet with someone. They  
19 would on the bigger jobs though.

20 **Q.** And on those bigger jobs would the leasing  
21 representatives also attend these construction meetings?

11:38:10

22 **A.** Maybe on occasion but not necessarily required.

23 **Q.** Now, were there cameras in the offices?

24 **A.** Yes.

25 **Q.** Please explain to the Court how the cameras worked.

11:38:29

1 **A.** Well, most of the offices I ever went into, the camera  
2 was always above your -- above your seat. So they could  
3 literally sit it down above you. Or it was over in the  
4 corner because they wanted to be able to see whoever was  
5 in the room. So it really depended how the office was  
6 laid out as to where it was. They had mine above me at  
7 one time and had to move it. So it would -- but it  
8 usually was on the ceiling somewhere in there.

9 **Q.** Would the camera show a leasing representative sitting  
10 at his or her desk?

11 **A.** Yes.

12 **Q.** To your knowledge, who had access to these cameras?

13 **A.** Our supervisors, directors, president of the company,  
14 the coordinators that took the calls.

15 **Q.** And how do you know that?

16 **A.** Well because they would tell us they could see us on  
17 there, you know. You could walk into the corporate  
18 office, and they had a monitor system set up where you  
19 could peek around the corner, and you could look at your  
20 own office. You could see the cameras, that they were  
21 watching them. Supervisors would let us know that they  
22 could see us on those cameras. They knew if we were in  
23 our offices or not.

24 **Q.** Now, I would like to talk about -- before I move on,  
25 how many leases a month were you doing as a leasing rep at

1 Boxer?

2 **A.** I'm going to give you an estimate because I don't know  
3 the exact number, but I was considered a top producer.

4 And if I had the inventory and you are talking about

11:40:06

5 leases, so I'm going to include renewals and expansions or  
6 downsizes; but probably somewhere between, I would say, 10  
7 and 20 would be an average.

8 **Q.** That's per month?

9 **A.** Yes, ma'am.

11:40:20

10 **Q.** And you said with each lease sometimes you would have  
11 to do multiple tours?

12 **A.** Yes.

13 **Q.** Please explain to the Court what you meant about  
14 renewals?

11:40:30

15 **A.** An existing tenant that wants to stay in the space.  
16 So we would have to prepare the documents to continue that  
17 lease for them.

18 **Q.** So in addition to getting new tenants, you had to also  
19 work with existing tenants?

11:40:44

20 **A.** Yes, ma'am.

21 **Q.** And then you said expansions of leases. How did that  
22 work?

23 **A.** Well, oftentimes, you know, since Boxer had such  
24 graduated sizes, they really focused primarily on the

11:40:55

25 small tenant, that is sort of their business model; but

1 they do have some buildings where we had large tenants.  
2 And the expansions, you know, the way to get them in would  
3 be to let them know that at any time within their term  
4 without penalty they could expand to a larger space. So  
11:41:13 5 that would vary. Maybe they had to move to a whole new  
6 space and sometimes they would maybe absorb a space that  
7 was vacant next door. We would open it up and work them  
8 in together and make them into one space.

9 **Q.** So how were you able to figure out who was up for  
11:41:30 10 renewal or who might want to get an expansion? How did  
11 that work?

12 **A.** Well, we had a system that would let us know.

13 Now, when I first started, it was different; but there  
14 toward the end, the automatic system would let us know  
11:41:45 15 every month who was up for renewal. We had a system that  
16 Boxer created. It was their own software. And it would  
17 prompt us to let us know about 90 days prior to a tenant's  
18 lease expansion [sic], and then we would start contacting  
19 the tenant, either via phone call or via e-mail or a  
11:42:06 20 notice or something like that.

21 **Q.** And were there ever times when you would make sort of  
22 cold calls to prospective tenants?

23 **A.** Do you mean like --

24 **Q.** People that hadn't leased in a Boxer building but you  
11:42:26 25 wanted to just call them and see if maybe they wanted to

1 come in, cold calls. Did you ever do that?

2 **A.** Occasionally. That wasn't something that I had to do  
3 really very often; but if things were slow, we could get  
4 on the internet and you could actually, if you were  
5 interested in the building, you could actually pull that  
6 building up and see what tenants were there and call  
7 tenants and you could cold call them.

8 **Q.** Were there any leads in Salesforce that you ever  
9 called?

10 **A.** Any leads for --

11 **Q.** In Salesforce for prospective tenants that maybe had  
12 been out and hadn't leased? Were there any requirements  
13 to follow up with leads in Salesforce?

14 **A.** Oh, yes. Absolutely.

15 **Q.** Please explain that to the Court.

16 **A.** Well, when I started working for Boxer, I was told  
17 that you don't kill a lead unless they were actually dead.  
18 Like the person is dead. That's what I was told when I  
19 was trained.

20 Now, of course, for a long time I took that literally.  
21 So I beat people up pretty bad, you know. But, yes,  
22 ma'am, we were expected until that -- you know, until that  
23 tenant or that prospect told us, I am not going to lease  
24 space in your building, you were expected to continue to  
25 call them, e-mail them, leave them messages, follow-up.

1 And in the system it's a -- Salesforce is a contact  
2 management system. So you could actually put your next  
3 prompt in there. So if I called them today and they are  
4 not quite ready, I may find out when they may be ready.

11:43:56

5 It might be next week. It might be a month from now or  
6 six months from now. It might be a year or six months.  
7 You would put that in. Every day you would pull up your  
8 list, and it would tell you who you had scheduled along  
9 with, you know, potential notes.

11:44:09

10 **Q.** Now, you mentioned there were some sales meetings that  
11 you attended. Do you recall that testimony?

12 **A.** Yes, ma'am.

13 **Q.** How frequently were those held?

14 **A.** The actual sales meetings were generally once a month.

11:44:22

15 **Q.** And how long did those sales meetings last?

16 **A.** They actually held the sales meetings during our lunch  
17 hour. So they would generally last about an hour and a  
18 half would be about average.

19 **Q.** And were these sales meetings voluntary or mandatory?

11:44:40

20 **A.** Mandatory.

21 **Q.** Now, was there any work that leasing representatives  
22 also needed to do in support of other leasing  
23 representatives?

24 **A.** Yes. We were expected to help each other, to support

11:44:51

25 each other. So there were times that, you know, I would

1 have agents contact me, you know, to ask me questions; and  
2 then there were times when I would contact other agents to  
3 ask them questions.

4 Oftentimes the regionals -- things were progressing so  
11:45:08 5 fast with changes and upgrading the systems that  
6 oftentimes your regional, once they were placed in that  
7 role, they didn't have a day-to-day contact with the  
8 systems we were using. So oftentimes they couldn't help  
9 us. We would have to talk to someone that was actually  
11:45:23 10 using the system or maybe someone in IT that would be able  
11 to help us.

12 **Q.** Now, you mentioned training. When you started at  
13 Boxer, what training, if any, were you given as a leasing  
14 agent?

11:45:35 15 **A.** It wasn't a formal training. You just kind of did a  
16 shadow with another agent on their actual portfolio in  
17 their office.

18 **Q.** So when you say "shadow," what do you mean?

19 **A.** You just follow them around all day long. Everything  
11:45:50 20 they do, you do. So if they are working on phone calls,  
21 they would open up a laptop for you and say, I'm going to  
22 call these people. You call these people. Okay. We're  
23 going on a tour. Follow me. And that was what I mean by  
24 shadowing.

11:46:07 25 **Q.** Did you ever have any leasing -- other Boxer leasing



1 representatives shadow you?

2 **A.** Yes.

3 **Q.** And did you have anybody come from out-of-town to  
4 shadow you?

11:46:19 5 **A.** I did.

6 **Q.** Please tell the Court about that.

7 **A.** We had some new buildings that Boxer had acquired in  
8 the Illinois area. I'm not sure exactly what town it was  
9 outside of Chicago. And they brought down that particular

11:46:37 10 leasing representative, flew her in, and she stayed, I  
11 think, about two weeks in a hotel there close by and came  
12 and shadowed me every day.

13 **Q.** And when you say shadowed you, she basically followed  
14 you around to learn how you did your job?

11:46:54 15 **A.** Yes, ma'am.

16 **Q.** And she was also a leasing representative?

17 **A.** Yes.

18 **Q.** And was there any online training that leasing  
19 representatives were given?

11:47:01 20 **A.** Not at the time that I was there. At the end of my  
21 tenure, they were trying to create modules. They had  
22 hired someone in that department, but it was something  
23 really new and fresh that had popped up. So I'm not sure  
24 what they are doing now.

11:47:18 25 **Q.** Did Boxer have a trainer that actually did training?

1 **A.** You mean like at their corporate office?

2 **Q.** Correct.

3 **A.** Not when I was there. So --

4 **Q.** So the training for leasing representatives was

11:47:34

5 primarily shadowing other leasing representatives to see  
6 how things were done?

7 **A.** Correct. Correct.

8 **Q.** I would like to talk about the systems at Boxer. You  
9 have mentioned Salesforce. Can you please tell the Court

11:47:46

10 what Salesforce is?

11 **A.** It's a contact management system, and it's  
12 internet-based.

13 **Q.** What is Salesforce used for?

14 **A.** Salesforce is used to schedule your appointments,

11:48:00

15 reminders. Also, they had also -- the DocuSign actually  
16 went through Salesforce. So you had to log in to  
17 Salesforce to actually do your contracts, your leasing  
18 contracts.

19 **Q.** And what information did you put into Salesforce as a  
20 leasing representative?

11:48:18

21 **A.** Well, you would put, you know, the name of the  
22 company, the phone number, their e-mail address, the  
23 person's name and, of course, what their requirements  
24 were, how many employees they had, what type of business  
25 it was, maybe even how long they had been in business.

11:48:32

1 Did they currently have an office space? If so, possibly  
2 might -- maybe where they were located, what was the  
3 reason they needed to move. Any pertinent information  
4 that may be applicable to help you to locate the perfect  
5 space for them.

11:48:49

6 **Q.** And who had access to your Salesforce records of the  
7 leasing representatives?

8 **A.** All of the leasing representatives had access, and  
9 none of us had our own password. So there was one

11:49:05

10 password that everyone used to access the system.

11 **Q.** Okay. And did it identify, for example, work that you  
12 did in Salesforce verses another sales representative --  
13 leasing representative?

14 **A.** The system had a drop-down that if someone plugged in  
15 a particular prospect that called in, whoever put that  
16 information in would assign it to the agent of that  
17 building. So the leasing representative of that  
18 portfolio, if they called in on my building, if the

11:49:23

19 coordinator put that information in, there was a drop-down  
20 that she could click on my name and then it would assign  
21 it to me. And then she would set a call, you know, for it  
22 to let me know that I needed to call that person.

11:49:42

23 **Q.** Was everything that you did put into Salesforce or  
24 just some things?

11:49:59

25 **A.** Well, I'll be honest. You know, we tried our best to

1 put as much as we could in there; but it wasn't completely  
2 possible to put 100 percent of your information in there  
3 because sometimes you were just busy and you would forget  
4 and -- or, you know, you weren't in the office. And the  
5 next morning when you would come in, you would forget to  
6 put it into the system.

7 **Q.** I would like to direct your attention, if I could, to  
8 Plaintiffs' Exhibit Number 45 in the notebook in front of  
9 you.

10 **A.** Which one? Which book?

11 **Q.** It's the white notebook, Exhibit 45.

12 MS. WILLIS: May I approach, Your Honor?

13 THE COURT: You may.

14 THE WITNESS: I see it.

15 MS. WILLIS: If you could go to 45.

16 Does Your Honor need a set of our exhibits?

17 THE COURT: I have got a lot of paper here. I'm  
18 not sure. Did you give me --

19 MS. WILLIS: I'll just put it up on the ELMO, Your  
20 Honor.

21 THE COURT: Okay.

22 BY MS. WILLIS:

23 **Q.** In looking at Exhibit 45, Ms. Shelby, do you see your  
24 name there, Sherry Shelby?

25 **A.** Yes, ma'am.

1 Q. And then you see a date there?

2 A. Yes, ma'am.

3 Q. Do you see a time there?

4 A. Yes.

11:51:44 5 Q. And then it says "tour"?

6 A. Yes.

7 Q. Do you see that?

8 A. Yes, ma'am.

11:52:01 9 Q. And then it says, "SS sign first EXP APPT." What does  
10 that mean?

11 A. Let's see. Sign first -- let's see. Can you scroll  
12 it back to the right side? Let me see. Does it have a  
13 tenant's name on it?

14 Q. It does not.

11:52:16 15 A. It looks like that might have been an expansion  
16 appointment, EXP.

17 Q. And if you look down this page, it has various other  
18 descriptions. Were those descriptions that you put in?

11:52:36 19 A. I have never seen anything that said "null." So I'm  
20 not sure what that is supposed to be.

21 Q. And then we have this column here that I will point to  
22 with my pen. Does this indicate essentially -- for  
23 example, if it was a walk-in, if there was an appointment  
24 set, if it was a first tour? Was that from a drop-down  
11:52:54 25 menu where you put in that information?

1 **A.** No. We would have typed that in.

2 **Q.** Okay. And then the column here that has the date and  
3 time, where would that information come from?

4 **A.** We did not put that in. So I am assuming that that  
5 must have been something that auto-populated in the  
6 system. I have never -- didn't even know it did that.

7 **Q.** Okay. So then here we have some other times listed.  
8 And would these be the times that you had indicated, for  
9 example, when the appointment was set or when the lease

10 was signed? For example, here it says "SS signed" and  
11 then the time it has is 4:45 p.m. to 5:45 p.m. Do you see  
12 that?

13 **A.** That may have been -- we typically would allot -- that  
14 looks odd. No. Because some of those look like an hour  
15 and some look like two hours. I'm not sure exactly what  
16 we are looking at right there, if that's the appointment  
17 time, why I would have had a two-hour appointment.

18 **Q.** Okay. Have you -- but you are familiar with  
19 Salesforce and utilizing Salesforce?

20 **A.** Yes, ma'am.

21 **Q.** So, for example, here where it has an appointment and  
22 a time range, would that be the time range that's  
23 estimated for that appointment?

24 **A.** Yes. Typically that would be the time range.

25 **Q.** If it says 4:00 to 5:00 p.m., that's the time range

1 for the appointment?

2 **A.** Yes, ma'am.

3 **Q.** And then this is the date set for the appointment?

4 **A.** Yes, ma'am.

11:54:34

5 **Q.** I will show you some others. So here is Page 2 of  
6 that same exhibit, which is Bates labeled BPMCSS-002468.

7 Does this appear to be the same type of record?

8 **A.** Yes, ma'am.

11:54:56

9 **Q.** So, for example, I'll direct you to the bottom of this  
10 one. It says, "Toured Quinton, and he will let me know in  
11 the morning." And it says this is August 6th, 2014; and  
12 it says 6:00 p.m. to 7:00 p.m. Do you see that?

13 **A.** Yes.

14 **Q.** Would that have been the time for the tour?

11:55:14

15 **A.** Yes.

16 **Q.** Okay. And if you could just look at Exhibit 45. Does  
17 Exhibit 45 appear to you to be the records that -- from  
18 you that were in Salesforce, to your knowledge?

11:55:39

19 **A.** You know, Rhonda, I really can't see this. I do see  
20 my name on it, there on the very left, but the print is so  
21 small.

22 **Q.** Okay. Great. I mean, I don't want to belabor the  
23 Court's time by going through each and every one of these.  
24 Would it be fair to say that for the appointments that did  
25 get entered into Salesforce, do these appear to be those

11:55:55

1 appointments?

2 **A.** Yes, they do.

3 **Q.** And then, for example, here there is a long -- that's  
4 okay. I won't belabor this by going through all of these,  
5 but these that are in Exhibit 45 appear to be your  
6 Salesforce records?

7 **A.** Yes, ma'am.

8 **Q.** But it is your testimony that not everything you did  
9 was put into Salesforce?

10 **A.** Correct.

11 **Q.** Just some of the things?

12 **A.** Correct.

13 MS. VALDERRAMA: If we could stop leading the  
14 witness and let her respond.

15 THE COURT: Sorry?

16 MS. VALDERRAMA: Leading, Judge.

17 THE COURT: I don't worry too much about leading  
18 when I'm sitting without a jury.

19 MS. WILLS: I'm just trying to get through it,  
20 Your Honor.

21 THE COURT: Huh?

22 MS. WILLS: I'm just trying to get through it.

23 THE COURT: I can discount for questions that are  
24 leading or lack of relevance or whatever.

25 BY MS. WILLS:



1 Q. So the Exhibit 45 information that we have looked at,  
2 other than you, who else could see that information?

3 A. Anyone in the leasing department could see it.

4 Q. How about your boss?

5 A. Yes.

6 Q. How about Alex Kakhnovets --

7 A. Yes.

8 Q. -- head of the leasing department, could he see it?

9 A. Yes.

10 Q. And were you aware of whether or not supervisors were  
11 going into Salesforce and looking at these Salesforce  
12 entries?

13 A. Yes, they were.

14 Q. How do you know that?

15 A. Well, I know for a fact that every day whatever your  
16 scheduled tasks were and, you know, that could vary for  
17 the particular assignment, what they had scheduled for  
18 that day, it was a requirement that you could not leave  
19 your assignment until all tasks were complete.

20 So every single day we generally got an e-mail  
21 starting in the morning that would reprimand because a lot  
22 of agents weren't completing their tasks. So I know they  
23 were looking at them because they were sending out  
24 reprimand e-mails because people were not completing them.

25 Q. Now, are you familiar with the Lync system that was

1 used at Boxer --

2 **A.** Yes, ma'am. I am.

3 **Q.** -- or is used at Boxer?

4 **A.** I am.

11:58:10 5 **Q.** Please tell the Court what the Lync system is.

6 **A.** Lync is like an in-house messaging system where all  
7 employees that have computer access are able to message  
8 one another with questions or requests.

9 **Q.** And who could see who was on Lync?

11:58:33 10 **A.** Anyone that was on their computer. So if I was  
11 sitting at my computer -- and your Lync is open because  
12 when you start your computer, it comes on. So you can  
13 automatically see -- you know, like I could see the  
14 leasing agents that were on or my supervisors that were  
11:58:53 15 on. Not necessarily a property manager, but I could see  
16 the leasing representatives.

17 **Q.** And could supervisors see who was on Lync?

18 **A.** Yes.

19 **Q.** Which supervisors?

11:59:07 20 **A.** All of them.

21 **Q.** Could Alex Kakhnovets, head of the entire department  
22 of leasing nationwide, could he see who was on Lync?

23 **A.** I would assume so. There is no reason why he  
24 shouldn't have been able to. We all could see it.

11:59:22 25 **Q.** And did you have to log in to Lync? Did it

1 automatically come on? Please explain to the Court how  
2 that worked.

3 **A.** It automatically came on when I signed on to my  
4 computer. So if my computer sat idle, for instance if I  
5 didn't touch my keyboard or engage the mouse and it went  
6 idle, it would kind of go into a resting mode and it would  
7 put, like, a different -- I don't know what the color was.  
8 It would put a different light. So if you were on and you  
9 were actively working, it would have a green light. If  
10 you were off and it was idle, it would have a different  
11 colored light on there.

12 **Q.** And did it ever turn red?

13 **A.** I don't recall, but I know there was a color when you  
14 weren't on. I don't recall what color it was, but I do  
15 believe it was red.

16 **Q.** And when you weren't on, what did that indicate?

17 **A.** It indicated that you weren't on your computer. It  
18 didn't necessarily indicate that you weren't in your  
19 building or that you weren't on your assignment. It just  
20 meant that you weren't on your computer. You could have  
21 turned away from your computer and had a client at your  
22 desk, a prospect at your desk, and you could have just  
23 been visiting, talking with, you know, a potential  
24 prospect or you could have been on an appointment, you  
25 know, showing the space. So -- but it just indicated that

1 you weren't actually on the computer.

2 **Q.** And what made you believe that supervisors were  
3 watching whether or not leasing representatives were on  
4 Lync?

12:00:57 5 **A.** Well, because my supervisor on a couple of occasions  
6 late in the evening actually messaged me and said, hey,  
7 what are you doing?

8 And I said, I'm working. What are you doing?

9 I'm working, too.

12:01:13 10 **Q.** Which supervisor was that?

11 **A.** Jerry Watson.

12 **Q.** And did you ever use or did, to your knowledge,  
13 leasing representatives use Lync to communicate with each  
14 other in various cities?

12:01:26 15 **A.** Yes. You can. Uh-huh.

16 **Q.** Can you explain to the Court how that worked, how the  
17 leasing reps, for example, in Houston were able to  
18 communicate with someone in Illinois?

12:01:39 19 **A.** Well, they were no different. You could see them on  
20 line. So, for instance, you know, if you had a question,  
21 you know, if one of them had a question for me, they could  
22 actually just -- I called it instant messaging because it  
23 would just pop up on your screen.

24 And then they would say, hey, are you busy? I have a  
12:01:56 25 question. Whatever. Whatever their concern was.

1 Q. What about e-mail? Was e-mail used? Was that a  
2 system that was used at Boxer Property?

3 A. Yes.

4 Q. Explain to the Court how e-mail worked.

12:02:15 5 A. How e-mailed worked?

6 Q. Well, in terms of when you were supposed to respond.

7 A. Well, immediately, as soon as possible. It was always  
8 important to Boxer to be able to respond, especially to  
9 prospects, as quickly as possible because we wanted to be  
10 the first company to reach out to them in order to grab  
11 that lease; and they put a great sense of urgency on that.

12 Q. What about responding to e-mails from others within  
13 the company, supervisors and the like?

14 A. Well, you were always expected to check your e-mails  
15 even when you weren't in the office. So if, you know,  
16 someone sent you an e-mail over the weekend and -- you  
17 needed to check it.

18 Q. If you could take a look, please, in the notebooks in  
19 front of you. Starting with Exhibit 70 and going through  
12:03:26 20 Exhibit 320. That's some 250 e-mails that we have.

21 MS. WILLS: If I may, Your Honor, I don't want  
22 to, obviously, use the Court's time by going through all  
23 250 e-mails.

24 THE COURT: Yeah. This has been informative in  
12:03:54 25 terms of what Ms. Shelby's duties were; but in terms of

1 whether her hours were cabined within the eight-hour slot  
2 or not, I'm not -- I'm not hearing a whole lot.

3 MS. WILLIS: Right. Do you want me to go through  
4 all the e-mails?

12:04:09 5 THE COURT: No.

6 MS. WILLIS: I didn't --

7 THE COURT: Is that the best way to show the  
8 hours?

9 MS. WILLIS: Her e-mails, yes. We have -- you  
12:04:18 10 know, we have time stamps on the e-mails. I mean,  
11 obviously, we're going to have her talk about it; but if  
12 the Court wants to see time stamps on things.

13 THE COURT: Let's have her talk about it and you  
14 can go through the e-mails if there is cross.

12:04:34 15 MS. VALDERRAMA: All right. That's fine.

16 MS. WILLIS: Do you want me to get into these now,  
17 Your Honor? It's noon.

18 THE COURT: We don't need to get into the  
19 e-mails. Talk more about what her hours were on the  
12:04:44 20 average day, what her hours were on the average month.

21 MS. VALDERRAMA: Can I have some clarification?  
22 What is the representation being made to the defendants  
23 and to the Court as to what the 250 e-mails purport to  
24 show? Even if they don't go through them, what are they  
12:05:00 25 there for?

1 MS. WILLIS: The e-mails were basically e-mails  
2 where we took those time records and we compared them to  
3 the e-mails and all of these e-mails, the 250 of them, we  
4 only have the e-mails from Ms. Shelby, are all e-mails  
5 that were sent or received different from what is in those  
6 time records, either before or after.

7 THE COURT: For what period of time do these 250  
8 e-mails cover?

9 MS. WILLIS: During the relevant time period, Your  
10 Honor. We only pulled the ones for --

11 THE COURT: Is it a two-week period or one-week  
12 period?

13 MR. RAMIREZ: Two years.

14 MS. WILLIS: Ms. Shelby, I think, has two years in  
15 the statute, about a year and a half.

16 THE COURT: 20 a month or something like that?

17 MS. WILLIS: Of the specific?

18 THE COURT: No. No.

19 MS. WILLIS: Roughly, that would be a good  
20 estimate.

21 THE COURT: Ten a month?

22 MS. WILLIS: Well, she has about a year and a half  
23 in the statute, based on her --

24 THE COURT: Okay.

25 MS. VALDERRAMA: Just to make sure I understand,

1 those are e-mails that were pulled by plaintiffs' counsel  
2 to compare against the time sheets that were filed by the  
3 plaintiff that they say are inaccurate?

4 MS. WILLIS: Correct. That actually not just that  
5 they say are inaccurate but Betty Jean Larson said were  
6 inaccurate.

7 THE COURT: Okay. Let's go ahead. Let's move on  
8 then.

9 MS. WILLIS: That's what the e-mails are for, Your  
10 Honor.

11 THE COURT: Okay.

12 MS. WILLIS: There is just one e-mail that we  
13 talked about in the opening that I would like to have her  
14 look at.

15 THE COURT: All right.

16 BY MS. WILLIS:

17 Q. Could I direct your attention, please, to Exhibit 282.

18 A. 282.

19 Q. Yes, please. In that notebook, 282. It is Bates  
20 number BM -- BPMC-047936.

21 A. Okay.

22 Q. Okay. Could you start at the bottom, and we'll work  
23 our way up because the bottom appears to be the first  
24 e-mail that was sent. This was an e-mail from you sent on  
25 December 3rd, 2015, at 9:14 a.m. to Lauren Young.



1 Do you see that?

2 **A.** Yes, ma'am.

3 **Q.** Is Lauren Young the young lady sitting here now that  
4 is now Lauren Hafner?

12:07:25

5 **A.** She is.

6 **Q.** Could you please explain to us why you were sending  
7 this e-mail to Lauren?

12:07:37

8 **A.** Well, I had received a couple of calls for that  
9 particular portfolio that she was assigned; and so, I  
10 wanted to clarify if the calls were actually being sent  
11 over to her or if they had something messed up with the  
12 actual call list.

13 **Q.** And the subject here is after-hours calls. Do you see  
14 that?

12:07:53

15 **A.** Yes, ma'am.

16 **Q.** And what did you mean by that?

17 **A.** Well, it came in after normal hours after we left the  
18 office. So --

12:08:07

19 **Q.** And then it appears that about 14 minutes after you  
20 sent this e-mail, you get a response from Ms. Hafner; is  
21 that correct?

22 **A.** Correct.

23 **Q.** And what does she say to you in response?

12:08:23

24 **A.** "I have had one call after 8:00 p.m. the past two  
25 evenings and no voicemail. Do you answer your phone that

1 late?"

2 **Q.** And then before you have an opportunity to respond,  
3 who responds to her?

4 **A.** Our supervisor.

12:08:37 5 **Q.** And what does he say in response?

6 **A.** "We are on call evenings and weekends unless you have  
7 arranged coverage."

8 **Q.** Okay. What did that mean to you?

9 **A.** Well, that means that you are on call 24 hours a day  
12:08:54 10 unless I called Lauren and said, Lauren, I can't take my  
11 calls. Can you cover for me? And then we would have to  
12 contact -- coordinate with the leasing coordinators to let  
13 them know that she would be covering for me.

14 **Q.** Okay. Could I also direct your attention, please, to  
12:09:11 15 Exhibit 285. And this is a multiple-page document of  
16 e-mails Bates labeled BPMP-048132 through BPMP-0848316.  
17 Do you see that?

18 **A.** Yes.

19 **Q.** This appears to be an e-mail that you are sending on  
12:09:48 20 Friday, December 4, 2015, and you are sending this one at  
21 7:21 p.m.?

22 **A.** Are you looking -- which one are you looking at?

23 **Q.** I am looking at -- well, we will start at the bottom.

24 THE COURT: You need to move the screen.

12:10:00 25 THE WITNESS: Okay.

1 BY MS. WILLIS:

2 Q. The bottom one is sent first. It's the DocuSign  
3 system sends this to you on December 3rd, 2015, at  
4 7:30 a.m. Do you see that?

12:10:12

5 A. Yes.

6 Q. Would that have been an e-mail that you received at  
7 7:30 a.m.?

8 A. Yes.

12:10:21

9 Q. Then at the top it's an e-mail that looks like you are  
10 sending from yourself to yourself at 7:21 p.m. Do you see  
11 that the following day?

12 A. Yes. Yes.

13 Q. And what was the purpose of doing that?

12:10:35

14 A. Generally in the evenings I would go home and continue  
15 to work. And so sometimes that would mean that maybe I  
16 would review documents. So I would e-mail them to myself  
17 so that when I got home I could pull them back up and  
18 review something I didn't have time to review in the  
19 office.

12:10:47

20 Q. Well, on that same day, a minute later, you sent an  
21 e-mail to your boss, Jerry Watson. Do you see that?

22 A. Yes.

23 Q. And you are sending this that same day at 7:22 p.m.?

24 A. Yes.

12:11:05

25 Q. And you say, "Jerry, I'm just now leaving and didn't

1 take a break at all today. I'm exhausted. I'll update  
2 the notes on Monday for the relo." Do you see that?

3 **A.** Yes.

4 **Q.** Can you please explain to us what you meant by this  
5 e-mail.

6 **A.** Well, he was asking me for something based on -- this  
7 was around the time that they were relocating me to a new  
8 assignment, to a new portfolio. So he must have asked me  
9 for something relating to an update in our system. So I  
10 was letting him know that it was going to be Monday before  
11 I got it back to him.

12 **Q.** And you are saying here, "I'm just now leaving." What  
13 did you mean by that?

14 **A.** Well, I was just now closing out my computer and  
15 getting ready to go home.

16 **Q.** Okay. And this was on a Friday?

17 **A.** That was on a Friday.

18 **Q.** How often would that happen to you that you would  
19 still be working at the office that late?

20 **A.** Almost every day.

21 THE COURT: So you worked almost every day to  
22 7:30?

23 THE WITNESS: Yes, sir.

24 THE COURT: Starting when?

25 THE WITNESS: After about maybe the first year

1 that I was there.

2 BY MS. WILLIS:

3 **Q.** Well, let's talk about during the relevant time period  
4 of 2014 to 2016. Can you please tell the Court what time,  
12:12:25 5 typically, you start working and what time, typically, you  
6 would stop working Monday through Friday?

7 **A.** My typical hours were between 8:00 a.m. and 8:00 p.m.

8 **Q.** Okay. And --

9 THE COURT: Did you take a lunch break?

12:12:39 10 THE WITNESS: Generally we would just eat in the  
11 office. We would either order something from Jimmy John's  
12 or the property manager sometimes would bring me something  
13 back when she would come back or sometimes I would take a  
14 Lean Cuisine or different things and we would eat while we  
12:12:55 15 were working.

16 BY MS. WILLIS:

17 **Q.** And where would you sit when -- when you say "eat  
18 while you were working," would that be at your desk?

19 **A.** Yes.

12:13:04 20 **Q.** And how about weekends? What hours did you typically  
21 work on weekends?

22 **A.** When I went to the office, I would generally go in for  
23 about four hours and that would vary. So sometimes I  
24 might go up there at 8:00 and work until about noon or  
12:13:22 25 sometimes I might pop in, you know, at 1:00 and work till

1 about 4:00 or 5:00. But on the phone calls, we were on  
2 call all the time. So there was no -- unless you were  
3 asleep, of course.

4 THE COURT: When you are talking about weekend  
12:13:35 5 work, are you talking about Saturday and Sunday or just  
6 Saturday?

7 THE WITNESS: On the phone calls, it's Saturday  
8 and Sunday. But generally, if I went into the office, it  
9 would generally be on a Saturday.

12:13:46 10 THE COURT: You would work roughly four hours?

11 THE WITNESS: Yes, sir. Sometimes a little more.  
12 There were some occasions I worked five or six hours on  
13 Saturdays; but generally, I tried to not go over four on  
14 that.

12:14:00 15 BY MS. WILLS:

16 **Q.** And can you please tell the Court, starting at 8:00  
17 a.m. on a Monday through Friday, sort of walk the Court  
18 through your day of an 8:00 to 8:00 schedule.

19 **A.** Okay. So generally we would come in or I would come  
12:14:13 20 in around 8:00, maybe five minutes before or after, in  
21 that range. We had very antiquated computer systems and  
22 they would -- my computer would take 20 minutes or so to  
23 come on. So that would be the first thing I would do is  
24 turn on my computer.

12:14:30 25 And in the meantime, once you got your computer up,

1 then you would open your Salesforce and look at what you  
2 had scheduled for the day. That would be the number one  
3 thing. You may have an appointment scheduled right off  
4 the bat. So you wanted to be prepared for the prospect  
5 when they came in.

12:14:47

6 So you would check your schedule, check your e-mails,  
7 start following up with e-mails, other people in the  
8 company asking questions, sending documents.

9 We also had an internal e-mail system that's outside  
10 of the normal Microsoft Outlook system, and we created  
11 what they called cases. And it was a way for upper  
12 management to monitor what was going on with the situation  
13 such as projects for the building or even maybe you  
14 request a marketing -- a marketing project, just anything

12:15:26

15 you needed was expected -- if it was internal, it was  
16 expected to be put in there. So we would also have to  
17 check our cases and update our cases and follow up on  
18 phone calls, get ready for our appointments, create our  
19 packets, you know, work on marketing, whatever it was on

12:15:44

20 our Craigslist -- and when I say marketing, on Craigslist  
21 and so on.

22 **Q.** Tours and prospects --

23 **A.** Yes, appointments.

24 **Q.** -- and things that you have talked about?

12:15:54

25 **A.** Renewal appointments, expansion appointments, new

1 appointments.

2 **Q.** About what time, typically, would you leave the office  
3 Monday through Friday?

4 **A.** Typically around 8:00.

12:16:05 5 **Q.** And after you left the office around 8:00 p.m., did  
6 you do further work after 8:00 p.m.?

7 **A.** Yes.

8 **Q.** Okay. And on a Monday through Friday about total, how  
9 many hours did you spend working after 8:00 p.m.?

12:16:17 10 **A.** About ten hours.

11 THE COURT: Wait. Wait. Wait. After 10:00  
12 p.m.?

13 THE WITNESS: No, after 8:00 p.m.

14 THE COURT: You worked another ten hours?

12:16:28 15 MS. WILLS: For the week.

16 THE WITNESS: For the week, yes, sir.

17 BY MS. WILLS:

18 **Q.** So that would be a couple of hours each night?

19 **A.** Yes.

12:16:33 20 **Q.** What would you do during the couple of hours each  
21 night on a Monday through Friday?

22 **A.** Generally that's the time you spent working on your  
23 Craigslist.

24 THE COURT: This is while you were at home?

12:16:44 25 THE WITNESS: Yes, sir.



1 Also, one of the things I had to do is sometimes, like  
2 I said, I had to review documents and I wouldn't have  
3 time. For instance, I may be working on a deal with an  
4 opposing broker. Sometimes they would send over a  
5 proposal. You would want to take that home and read it.

12:16:55

6 Or emerging market reports, we would have to compare  
7 every month to make sure that we had our productivity  
8 match to what they had in the actual report. So I would  
9 take those home and review those as well.

12:17:10

10 BY MS. WILLS:

11 Q. I think we just put up one example of you sending --  
12 at 7:21 you sending a document to yourself.

13 A. Yes.

14 Q. Can you explain to the Court how that worked into you  
15 continuing to work once you got home.

12:17:18

16 A. Well, I needed to look at that document. I needed to  
17 review that document. So I sent it to my personal e-mail  
18 so that when I got home I was able to pull it up on my  
19 laptop and actually look at it because I wouldn't be able  
20 to see it well enough on the actual screen on the little  
21 phone that I had.

12:17:32

22 Q. And so I believe you said that you were having to do  
23 sometimes hundreds of Craigslist ads a day?

24 A. A month, yes.

25 Q. And how did the Craigslist ads -- how did that work

12:17:47

1 into your couple of hours of work that you did after you  
2 left the office? Please explain that to the Court.

3 **A.** Well, that was a very slow process to post those  
4 because, as I said, the system gauges how quickly you can  
5 put them in. So it takes a long time to get -- say, for  
6 instance, if you put in five ads, you put them in too  
7 fast, it would freeze up. And so then you would have to  
8 wait 10 minutes or 15 minutes and then go back and, you  
9 know, start again. So you would try to get it timed just  
10 right to where, you know, every couple of minutes you were  
11 putting one through.

12 **Q.** And so how many Craigslist ads were you then doing  
13 usually at night when you got home?

14 **A.** It would vary. In order to get to where we needed to  
15 be at the end of the month to potentially try to get our  
16 recognition or our subjective bonus, you were probably  
17 going to average -- and this is an average. Let's see.  
18 There is maybe 20 or 25 a day, a night, on those.

19 **Q.** And when you were putting up these Craigslist ads, you  
20 would average 20 to 25 a night, how much time would you  
21 have to wait between each ad before Craigslist would let  
22 you run another one?

23 **A.** Generally, I would say, a couple of minutes in order  
24 to keep it from freezing up.

25 **Q.** The ads that you posted, did you have to make any

1 changes to it before you posted a new one?

2 **A.** Sometimes, yes.

3 **Q.** And was that because the system required that?

4 **A.** Yes.

12:19:28

5 **Q.** So just to recap, can you explain to the Court  
6 8:00 a.m. to 8:00 p.m., those were the times when you were  
7 at the office, correct?

8 **A.** Yes.

12:19:43

9 **Q.** And you said that your lunch was typically a working  
10 lunch where you sat at your desk?

11 **A.** Yes.

12 **Q.** Is that fair?

13 **A.** Yes.

12:19:48

14 **Q.** And then after you left the office, you said each  
15 night you worked for a couple of more hours generally; is  
16 that right?

17 **A.** Yes.

12:19:59

18 **Q.** And please tell the Court when you went home that  
19 evening and worked a couple of more hours what you were  
20 doing during that time.

21 **A.** I would be reviewing the reports, reviewing documents  
22 such as leases, et cetera, and working on Craigslist ads  
23 and taking phone calls when they came through, potentially  
24 checking e-mails if I had something come through.

12:20:13

25 **Q.** And we saw the e-mail exchange that you had with

1 Lauren Young Hafner where you mentioned getting calls that  
2 were meant for her after 8:00 p.m.; is that right?

3 **A.** Correct.

4 **Q.** Please explain to the Court on Saturdays what you  
5 would do when you would come into the office on Saturdays.

6 **A.** On Saturdays it could have potentially been because I  
7 had a prospect that wanted to look at space on Saturdays.

8 However, sometimes if we had to work on a construction  
9 drawing, that would be a time that we might would come in

10 and try to work on that because we would be undisturbed.

11 Also, just general clean-up. If you were just so slammed  
12 that week, you know, you would come in and get your files  
13 organized and get your office cleaned up and back to Boxer  
14 standards.

15 **Q.** And what about tours?

16 **A.** Yes. We would do tours on Saturdays occasionally.

17 **Q.** And were there any other things you did on Saturdays?  
18 What about Craigslist?

19 THE COURT: She said that. She said that.

20 **A.** Yeah. Yes, ma'am.

21 BY MS. WILLS:

22 **Q.** Okay. We have now talked about the, I believe you  
23 said, average of 70 hours a week that you worked during  
24 the time you worked at Boxer?

25 **A.** Yes.

1 Q. The estimates that you have given to the Court, would  
2 that be pretty consistent each workweek that you worked?

3 A. Yes.

4 Q. Okay. If I could direct your attention, please, to  
5 Exhibit 1. I will represent to you that Exhibit 1  
6 includes records that were produced to us that we were  
7 told by Boxer were time cards that were for you during  
8 your employment there.

9 In looking at Exhibit 1, do you recognize any of these  
10 instruments?

11 A. No. I mean, I can't say that I do.

12 Q. Okay. Who prepared your time? Who filled out your  
13 time?

14 A. Well, sometimes we would put -- I would put it  
15 through, but sometimes a coordinator would put it through.

16 Q. And when the coordinator did your time, what  
17 information, if any, did you give the coordinator about  
18 how much time to put in for you?

19 A. None.

20 Q. What were you told, if anything, about recording time  
21 as a leasing representative at Boxer?

22 A. I was told on multiple occasions by multiple different  
23 people that it didn't matter what you put in there because  
24 Boxer wasn't going to pay you overtime.

25 Q. What was your understanding about why Boxer wasn't

1 going to pay you overtime?

2 **A.** Because we were exempt from overtime.

3 **Q.** So what was your understanding about why you needed to  
4 put in any time at all?

12:24:05 5 **A.** I never really understood that.

6 **Q.** Would you have gotten your paycheck if time wasn't put  
7 in for you?

8 **A.** Somebody would have put it through. If I didn't put  
9 it in, they would have put it through.

12:24:18 10 **Q.** I would like to direct your attention, if I could, to  
11 -- we're still at Exhibit 1. If you could look at the  
12 page that's Bates marked BPMC-000460. Do you see that  
13 where it says you, Sherry Shelby?

14 **A.** Yes.

12:24:48 15 **Q.** And it is the time period of Monday, June 1, 2015, and  
16 it goes through -- for a two-week period to Friday,  
17 June 19th, 2015. Do you see that?

18 **A.** Yes.

19 **Q.** Okay. So the week that's June 1st through June 5th,  
12:25:06 20 it has 12:00 a.m. to 8:00 a.m. Do you see that?

21 **A.** Yes, I do.

22 **Q.** Do you have any explanation as to why the time would  
23 say 12:00 a.m. to 8:00 a.m.?

24 **A.** I don't have a clue.

12:25:22 25 **Q.** Those weren't the standard office hours, were they?

1 A. No, ma'am.

2 Q. Then we see, going further down, all the other entries  
3 say 8:00 to 4:00. Do you see that?

4 A. Yes.

12:25:33

5 Q. Was that the typical time that was entered for you,  
6 8:00 to 4:00?

7 A. Apparently so. I mean, I don't know. I would have to  
8 look through these records to see, but it's not the time  
9 that we worked.

12:25:47

10 Q. Sure.

11 THE COURT: Did you ever enter time for the hours  
12 you put in on Saturday?

13 THE WITNESS: Yes. On a couple of occasions I  
14 did.

12:25:58

15 THE COURT: So you must have thought it had some  
16 relevance then, huh?

17 THE WITNESS: Well, there was an issue there at  
18 the very end of my tenure. I had a supervisor I was  
19 not -- it was a new supervisor, and we were having  
20 difficulty working together. And so I wanted to let him  
21 know that there toward the end of my tenure that I had  
22 been there because he was acting like I wasn't giving  
23 enough in my position and I was working really hard, you  
24 know.

12:26:12

12:26:30

25 THE COURT: Well, I understood Boxer to say that

1 one reason for keeping track of hours was whether you got  
2 vacation time or whether you got comp time. Was that ever  
3 explained to you?

4 THE WITNESS: We did not get comp time. We did  
12:26:44 5 have PTO but no comp time.

6 THE COURT: But would that have been a reason  
7 that would make sense to you as to why you'd keep track of  
8 hours?

9 THE WITNESS: Yes, sir. Yes, sir. They would be  
12:26:55 10 able to keep track of the PTO if we took a day off.  
11 You'll see there it says PTO.

12 THE COURT: Yeah.

13 BY MS. WILLS:

14 Q. I would like to direct your attention, if I could, to  
12:27:15 15 Exhibit 3.

16 A. 3?

17 Q. Yes, please. These are the time records for another  
18 class member by the name of Mark Brady. You'll see here  
19 on Mr. Brady's records we have 12:00 a.m. to 8:00 a.m.

12:28:01 20 And then it goes 8:00 a.m. to 4:00 p.m. for the rest of  
21 the entries. Do you see that?

22 A. Yes.

23 Q. Then we also have the same thing for Mr. Brady again,  
24 8:00 a.m. to 4:00 p.m. Do you see that?

12:28:16 25 A. Yes.



1 Q. And we have again for Mr. Brady 8:00 a.m. to 4:00 p.m.

2 Do you see that?

3 A. Yes.

4 Q. We have again for Mr. Brady 8:00 a.m. to 4:00 p.m. Do

12:28:38

5 you see that?

6 A. Yes.

7 Q. And then we go to these that don't even have times.

8 It just has eight fours hours for a total of 40 hours. Do

9 you see that?

12:28:54

10 A. Yes.

11 Q. Forty hours?

12 A. Yes, ma'am.

13 Q. We have the same thing again for Mr. Brady, just eight

14 hours, forty hours. Do you see that one?

12:29:04

15 A. Yes, ma'am.

16 Q. We have the same thing again for Mr. Brady, eight

17 hours every day, Monday through Friday, 40 hours. Do you

18 see that?

19 A. Yes, ma'am.

12:29:19

20 Q. We have the same thing again for Mr. Brady --

21 MS. WILLS: Your Honor, I don't want to belabor

22 this. We are putting these into evidence for the Court's

23 review. I can go through all of them.

24 THE COURT: I don't think you need to go through

12:29:30

25 all of them. I understand your point.

1 MS. WILLIS: I can go through some of the other  
2 class representatives, if the Court would like, maybe some  
3 of the other class members.

4 THE COURT: Okay. Maybe we can do that quickly.

12:29:42

5 MS. WILLIS: I'm sorry?

6 THE COURT: Maybe we can go through a few of the  
7 other class reps quickly if that means we don't have to go  
8 through with the class reps themselves.

12:29:49

9 MS. WILLIS: I'll go through some of the people  
10 that aren't here, Your Honor, so you can see them as well.  
11 When the other class members testify, we will do theirs.

12 BY MS. WILLIS:

13 Q. Who is this person? I can't read this. Who is this?

12:30:13

14 THE COURT: I'll tell you what. Let's stop for  
15 our lunch break. We'll resume at 1:15.

16 (Recess from 12:30 p.m. to 1:18 p.m.)

17 THE COURT: Okay. Are we ready to resume?

18 MS. WILLIS: We are, Your Honor.

19 THE COURT: Resume your position.

01:20:44

20 THE WITNESS: Thank you.

21 THE COURT: You may inquire.

22 MS. WILLIS: Before we resume, Your Honor, just  
23 one housekeeping matter. We have read Your Honor's local  
24 rules. I just wanted to be clear. Our understanding is  
25 because there were no objections filed to any of our

1 exhibits, they have been admitted. I haven't been  
2 offering admitting them based on Your Honor's standing  
3 order.

4 THE COURT: Normally that's what we do; is that  
5 right? No objections, then we admit them.

6 MS. WILLS: There were no objections by them.

7 MS. VALDERRAMA: We have no objection.

8 THE COURT: They are admitted.

9 MS. WILLS: That's why we haven't been offering  
10 them.

11 THE COURT: It is always good to check.

12 MS. WILLS: I'll proceed.

13 BY MS. WILLS:

14 **Q.** If you could pull out that first big notebook you were  
15 looking at before we took a break.

16 THE COURT: Which one was that?

17 BY MS. WILLS:

18 **Q.** It's the first notebook that starts with tab one. I'd  
19 like for us to take a look at some of the time records of  
20 some of the opt-in plaintiffs that you are representing.

21 Could I direct you, please, to Exhibit 11. Exhibit 11 is  
22 the time record for Robert Harrington. Do you see that?

23 **A.** Yes.

24 **Q.** And do you see for each day there is time entered for  
25 Mr. Harrington that just says eight hours? Do you see

1 that?

2 **A.** I do.

3 **Q.** Again, we're looking at the time records for  
4 Mr. Harrington, and do you see there every single entry it  
5 simply says eight hours. Do you see that?

6 **A.** Yes. Yes.

7 **Q.** Again, we're looking at the time records for  
8 Mr. Harrington, and every single day it says just eight  
9 hours. Do you see that?

10 **A.** Yes.

11 **Q.** Again, we're looking for the time records -- at the  
12 time records for Mr. Harrington, and every single day it  
13 says eight hours. Do you see that?

14 **A.** Yes, ma'am.

15 **Q.** Again, we're looking at the time records for  
16 Mr. Harrington and each day it says eight hours, Monday  
17 through Friday, for a total of 40 hours each workweek. Do  
18 you see that?

19 **A.** I do.

20 **Q.** Again, we're looking at the time cards for  
21 Mr. Harrington, and do you see it says, again, eight hours  
22 each, Monday through Friday, for a total of 40 hours?

23 **A.** Yes.

24 **Q.** We are still looking at the time records for  
25 Mr. Harrington. And do you see there it says for every

1 single workday, Monday through Friday, it just says eight  
2 hours Monday through Friday. Do you see that?

3 **A.** Yes.

4 **Q.** Again, we're looking at the time records for

01:23:39 5 Mr. Harrington, and Monday it just has time for Monday  
6 through Friday, eight hours each day. Do you see that?

7 **A.** Yes.

8 **Q.** The same thing, next entry, it says Monday through  
9 Friday, eight hours each day, for Mr. Harrington. Do you

01:23:56 10 see that?

11 **A.** Yes.

12 **Q.** Again, we're looking at the time records for

13 Mr. Harrington, and it says eight hours, Monday through  
14 Friday, each day. Do you see that?

01:24:09 15 **A.** Yes.

16 **Q.** Again, we're looking at the time records for

17 Mr. Harrington, and it has a total hours of 40. It looks  
18 like there are -- I don't know. I can't figure this out.

19 It looks like there is a holiday in there, but it totals

01:24:28 20 40 hours each workweek. Do you see that?

21 **A.** I do.

22 **Q.** Again, we're looking at the time records for

23 Mr. Harrington, and it has Monday through Friday, eight  
24 hours each day, for a total of 40 hours each workweek. Do

01:24:50 25 you see that?

1 **A.** I do.

2 **Q.** We're still looking at the time records for  
3 Mr. Harrington. It has the same thing, eight hours each  
4 Monday through Friday?

01:24:59

5 **A.** Yes.

6 **Q.** Again, we're looking at the time records for  
7 Mr. Harrington. It has the same thing, Monday through  
8 Friday, eight hours each day. Do you see that?

9 **A.** Yes.

01:25:16

10 MS. WILLS: I won't belabor this, Your Honor.

11 THE COURT: Yes. I get the pattern.

12 BY MS. WILLS:

13 **Q.** So let's take a look at Exhibit 13. These are the  
14 time records for another opt-in plaintiff, Andrea Johnson.

01:25:40

15 And we're looking at the time records for Ms. Johnson.

16 And it has 8:00 to 4:00 every single day, and it looks  
17 like Monday through Friday. Do you see that? 8:00 to  
18 4:00. 8:00 to 4:00. 8:00 to 4:00. Do you see that?

19 **A.** Yes.

01:26:00

20 **Q.** And again it -- we are looking at the time records for  
21 Ms. Johnson, and it says 8:00 to 4:00. Do you see that?

22 **A.** Yes.

23 **Q.** Okay. Let's take a look at the records for another  
24 opt-in plaintiff. Let's take a look at Exhibit 15, the

01:26:17

25 records for Travis Lemley. For Mr. Lemley it looks like

1 it's eight hours each day, and it looks like 8:00 to 4:00.  
2 Then there are some 12:00 a.m.s to 8:00 a.m.s but mainly  
3 it's 8:00 to 4:00 and one week it's 12:00 a.m. to 8:00  
4 a.m. Do you see that?

01:26:50

5 **A.** I do.

6 **Q.** The same thing again. It's eight hours each day.  
7 8:00 a.m. to 4:00 p.m., but then it looks like there is  
8 one 12:00 a.m. to 8:00 a.m. in there. The rest are  
9 8:00 a.m. to 4:00 p.m. Do you see that?

01:27:06

10 **A.** Yes.

11 **Q.** Again, looking at the records for Mr. Lemley, the same  
12 thing again. 8:00 a.m. to 4:00 p.m. Do you see that?

13 **A.** I do.

01:27:22

14 **Q.** 8:00 a.m. to 4:00 p.m. 8:00 a.m. to 4:00 p.m. Still  
15 looking at the records for opt-in plaintiff Mr. Lemley.  
16 Again, it's 8:00 a.m. to 4:00 p.m. 8:00 a.m. to 4:00 p.m.  
17 Do you see that?

18 **A.** I do.

01:27:35

19 **Q.** Still looking at the records for Mr. Lemley. 8:00  
20 a.m. to 4:00 p.m. 8:00 a.m. to 4:00 p.m. Do you see  
21 that?

22 **A.** Yes.

01:27:49

23 **Q.** Looking at the time records again for Mr. Lemley, it's  
24 8:00 a.m. to 4:00 p.m. Although, sometimes there is a  
25 12:00 a.m. to 8:00 a.m. that creeps in there. It looks

1 like some PTO time somebody stuck in there. 12:00 a.m. to  
2 8:00 a.m. for PTO time. Generally, it's 8:00 a.m. to 4:00  
3 p.m., but only eight hours each day. It's Monday through  
4 Friday. Do you see that?

01:28:07

5 **A.** Yes, ma'am.

01:28:22

6 **Q.** I am still looking at the time records for Mr. Lemley.  
7 Same thing. 8:00 a.m. to 4:00 p.m. or there is a  
8 12:00 a.m. to 8:00 a.m. stuck in there, but it's still  
9 nothing more than eight hours a day, Monday through  
10 Friday?

11 **A.** Correct.

12 MS. WILLS: I'll move on, Your Honor, to another  
13 opt-in plaintiff. I don't want to belabor the point.

14 THE COURT: Yeah. I think I get the point.

01:28:36

15 MS. WILLS: Just very quickly then, I'll show the  
16 records of one other opt-in plaintiff.

17 THE COURT: Okay.

18 BY MS. WILLS:

01:28:51

19 **Q.** I'm looking at Exhibit 19 now. It's Phillip Owens.

20 And again, each entry is eight hours, Monday through  
21 Friday, eight hours a day, Monday through Friday. Do you  
22 see that, ma'am?

23 **A.** Yes.

01:29:06

24 **Q.** Again, looking at the records for Phillip Owens,  
25 opt-in plaintiff, eight hours a day Monday through Friday.



1 Do you see that?

2 **A.** Yes. Yes.

3 **Q.** Again, looking at the records for Mr. Philip Owens,  
4 it's eight hours a day, Monday through Friday. Do you see  
5 that?

01:29:19

6 **A.** Yes.

7 **Q.** What was your understanding as a leasing  
8 representative about whether or not leasing  
9 representatives at Boxer Property would be paid any  
10 overtime?

01:29:43

11 **A.** We did not get overtime. That was my understanding.

12 **Q.** How did you come to that understanding?

13 **A.** Well, we were exempt, and we were told. I had  
14 multiple conversations with different supervisors in  
15 regard to either receiving overtime or possibly receiving  
16 comp time. I tried to get them to start giving me some  
17 comp time for all the extra time. They said they didn't  
18 do that either.

01:29:55

19 THE COURT: What were you paid during these  
20 years?

01:30:09

21 THE WITNESS: My salary?

22 THE COURT: Yes.

23 THE WITNESS: When I left with my bonuses it was  
24 right at \$80,000 a year.

01:30:18

25 THE COURT: Okay.

1 BY MS. WILLS:

2 Q. I want it to be really clear. I wanted to make sure  
3 that we were clear to the Court. Typically, the office  
4 would close to the public around 5:30; is that correct?

01:30:33

5 A. Typically.

6 Q. But there were times that the office would be open  
7 even to the public after 5:30; is that correct?

8 A. Yes. If you were in the office, the office would be  
9 considered to be open.

01:30:46

10 Q. Would you explain to the Court what you would be doing  
11 at the office from 5:30 to 8:00 during that time period?

12 A. Well, typically, what I would do is once the property  
13 manager left between 5:00 and 5:30, that's when I would  
14 finish up with the Salesforce tasks for the day. If I had  
15 any additional e-mails to return, I would finish those.

01:31:02

16 And once I was complete with those is when I would catch  
17 up with processing all my paperwork, stacking my leasing  
18 files, filing, putting everything away so that we would be  
19 fresh and ready to go for the next day.

01:31:19

20 Q. And were these tasks that you needed to do during that  
21 time period generally?

22 A. What do you mean by needed to do during that time  
23 period?

24 Q. Well, from 5:30 to 8:00, were these things -- what  
25 would be causing you to do these things later in the day?

01:31:32

1 **A.** Well, during the day you are dealing with your  
2 appointments. You are dealing with tenants that are  
3 coming in the office. You are dealing with renewals. You  
4 are dealing with expansions. You may have to work on a  
5 construction drawing. There is a lot of activity that  
6 goes on in the office. When property managers are out for  
7 extended periods of time, there is a lot of disruptions  
8 from the tenants that come in.

9 So by the time everyone would finally leave, that  
10 would give you an opportunity to actually catch up on,  
11 like I said, finishing up your Salesforce tasks, finishing  
12 up your last few e-mails, and also putting your paperwork  
13 together and having your files ready and stacked.

14 Also, like if we may have to fill out a credit card  
15 authorization and send those up to accounting, potentially  
16 creating what we call CME cases after we have walked  
17 spaces for work orders about things that need to happen in  
18 your suites or possibly things that you have seen  
19 throughout the building.

20 So it was just a time you could actually work  
21 uninterrupted and catch up on all the things that needed  
22 to be done.

23 **Q.** Who knew that you were working -- starting to work on  
24 average at 8:00 a.m.? Who knew you were starting to work  
25 before the office opened at 8:30?

1 **A.** Well, my supervisor knew, Jerry Watson. I know for  
2 sure he knew.

3 **Q.** And what makes you believe he knew?

4 **A.** Well, because he would schedule appointments with us.

01:32:55

5 Sometimes we would do, like, an online appointment where  
6 they -- where you can link together multiple people on the  
7 internet, and he would schedule appointments for us at  
8 8:30. So he knew we would have to be there by 8:00 to be  
9 able to be prepared for a meeting at 8:30. It would take

01:33:13

10 20 minutes to get your computer on. So he knew that we  
11 would have to be there early.

12 **Q.** Who knew or should have known that you were working  
13 during lunch?

14 **A.** Everybody knew. I mean, it wasn't a secret. You  
15 know, in order to -- you are on Lync. Everybody can see  
16 you. So if you are not actually working, it's going to go  
17 idle, and they are going to see you are not actually  
18 working. Still, that doesn't mean you weren't in your  
19 office. But if I'm working during lunch, I'm working, and  
20 oftentimes I had a sandwich in my hand and I'm, you know,  
21 working on Salesforce or whatever it was. So you would be  
22 able to see me on line.

01:33:42

23 **Q.** What about with the cameras?

24 **A.** Absolutely on the cameras. Yes. Yes.

01:33:55

25 **Q.** Who knew that you were working on the weekends?

1 **A.** Jerry knew.

2 **Q.** How? What makes you believe that he knew or should  
3 have known you were working on weekends?

4 **A.** Because I would tell him. Uh-huh. I would tell him,  
5 you know, I came in Saturday, you know, because the  
6 assignments, you would have so much on you -- really, you  
7 should have had in some -- I don't believe that anyone in  
8 our actual case had two people in their office. But a lot  
9 of assignments actually had two leasing representatives

10 that would be assigned. So one of them would work the  
11 renewals and the expansions, and the other one would  
12 possibly do the new leases.

13 So if you didn't have that situation going on, you are  
14 trying to really juggle the job of two people, and there  
15 was no time for rest.

16 **Q.** And I would like to direct your attention, if I could,  
17 please, to Exhibit 47 in that notebook in front of you.  
18 Do you recognize Exhibit 47 as being the notice of consent  
19 that you filed in this case to start this lawsuit?

20 **A.** 47, yes, ma'am.

21 **Q.** Is that your signature on Exhibit 47?

22 **A.** It is.

23 **Q.** And it's dated June 1, 2016; is that correct?

24 **A.** That is correct.

25 **Q.** I'd like you to take a look, please, at Exhibit 2.

1 And I will tell you that Exhibit 2 has been represented to  
2 us as being your pay records. Do these appear to be your  
3 pay records, your earning statements from the time period  
4 of June 2014 until your employment ended in 2016 or early  
5 2016? I think it ended in February of 2016.

01:35:59

6 **A.** Yes, ma'am. They do have my name on them.

7 **Q.** If you could please take a look at -- if you could  
8 take a look, please, at Exhibit 58.

9 **A.** 58?

01:36:34

10 **Q.** Take a look at Page 8 of Exhibit 58.

11 **A.** Sorry. These books are -- excuse me. You said 58?

12 **Q.** Yes, ma'am.

13 **A.** That's a --

14 **Q.** I'll put it up for you. Exhibit 58 is your damage  
15 model, Ms. Shelby. If you will look at the bottom of  
16 your -- if you will look at the number of hours per  
17 workweek on average, how many hours per workweek on  
18 average are you asking the Honorable Court to compensate  
19 you for?

01:37:09

20 **A.** 70.

01:37:26

21 **Q.** And that would be for the time period of June 1st,  
22 2014, through the end -- through February or March 4th of  
23 2016; is that correct?

24 **A.** Correct.

01:37:40

25 THE COURT: Why did you leave?

1 THE WITNESS: Why did I leave?

2 THE COURT: Yes.

3 THE WITNESS: Well, when I started with Boxer  
4 they had in the Boxer Management Style they had about a  
01:37:50 5 two to three paragraph proprietary information and  
6 confidentiality agreement; and about the five-year mark in  
7 January, they had created this internal system where we  
8 would electronically acknowledge things. They sent out an  
9 annual acknowledgment that year.

01:38:09 10 That particular year that I left, when the annual  
11 acknowledgment came over, it was glitching; and we  
12 couldn't read it. I was able to finally print it out.  
13 And it turned out that what they had done was they had  
14 took the confidentiality agreement and turned it into a  
01:38:25 15 proprietary information, confidentiality, non-compete  
16 contract. And I actually printed that. It was five or  
17 six pages, I believe.

18 So I sent that over because I was concerned because I  
19 was having problems with that new supervisor and I was  
01:38:41 20 concerned that because it said for whether you quit or  
21 whether they terminated you, I believe it was a period of  
22 two years.

23 THE COURT: You couldn't work anywhere else in  
24 the same field?

01:38:52 25 THE WITNESS: Right. And so I paid an attorney.

1 I sent it to an attorney. It was not Ms. Wills. I don't  
2 recall his name. I would have to go into my e-mail. I  
3 paid an attorney \$500 to review it. And he did confirm to  
4 me that it was a non-compete contract, and I would be held  
5 to it.

01:39:07

6 So I loved my job. I enjoyed my job. And I wanted to  
7 keep my job. And I went to Boxer, and I tried to  
8 negotiate the terms of the agreement. Can we maybe, you  
9 know, maybe let's do a year. You know, I want it to be  
10 reasonable and try to work with them.

01:39:22

11 And we went back and forth on a couple of different  
12 e-mails over a couple of days and then, finally, they just  
13 didn't want to work with me on it and they terminated me.

14 THE COURT: Okay.

01:39:35

15 BY MS. WILLS:

16 **Q.** If you'll look at the bottom, Ms. Shelby, of the  
17 damage model. Can you tell the Court how much you are  
18 asking the Court to award to you in this matter?

19 **A.** \$58,572.02.

01:39:49

20 **Q.** And you understand, of course, that you are not here  
21 just as yourself but you are also representing everyone as  
22 a class representative? You understand that, correct?

23 **A.** Yes, ma'am.

24 **Q.** So I would like for you to also, in looking at

01:40:03

25 Exhibit 58, I would like to take a look at the damages for



1 the class members that you are representing who will not  
2 be testifying today so that you can please tell the Court  
3 how much money you are seeking on their behalf?

4 **A.** Yes, ma'am.

01:40:16

5 **Q.** I would like to start with Mark Brady, who is also an  
6 opt-in plaintiff. Do you see that Mr. -- how many hours  
7 per week are you asking on average are you asking this  
8 Honorable Court to pay Mr. Brady for in this matter?

9 **A.** 60 hours.

01:40:30

10 **Q.** And that is where the time period of the pay period  
11 starting in June, 2015 through March of 2016; is that  
12 correct?

13 **A.** That is correct.

01:40:41

14 **Q.** Can you please tell this Honorable Court the amount of  
15 money you are asking that Mr. Brady be awarded?

16 **A.** \$15,111.89.

17 **Q.** Then Trevor Clinch, who is also an opt-in plaintiff in  
18 this matter, how many hours per workweek on average are  
19 you asking this Honorable Court to compensate Mr. Trevor  
20 Clinch for?

01:41:03

21 **A.** 60 hours.

22 **Q.** That's for the pay period of June 2015 through the end  
23 of November 2015; is that correct?

24 **A.** That is correct.

01:41:10

25 **Q.** How much money are you asking this Honorable Court to

1 award to Mr. Clinch?

2 **A.** \$10,818.48.

3 **Q.** If we could now take a look at the damage model for  
4 Robert Harrington, who is also an opt-in plaintiff in this  
5 matter. How many hours per workweek on average are you  
6 asking this Honorable Court to award to Mr. Harrington?

7 **A.** 60.

8 **Q.** That's for the pay period of August of 2016 through  
9 May of 2017; is that correct?

10 **A.** That is correct.

11 **Q.** And how much money are you asking this Honorable Court  
12 to award to Mr. Harrington?

13 **A.** \$19,696.77.

14 **Q.** And this is the damage model for Andrea Johnson, who  
15 is also an opt-in plaintiff in this matter. How many  
16 hours on average per workweek are you asking this  
17 Honorable Court to award Ms. Johnson?

18 **A.** 60.

19 **Q.** That's for the pay period of July 2015 through August  
20 of 2015; is that correct?

21 **A.** That's correct.

22 **Q.** And how much money are you asking this Honorable Court  
23 to award to Ms. Johnson?

24 **A.** \$1,921.80.

25 **Q.** Taking a look at the damage model for opt-in plaintiff

1 Travis John Lemley, how many hours per workweek on average  
2 are you asking this Honorable Court to award to  
3 Mr. Lemley?

4 **A.** 60.

01:42:41 5 **Q.** That's for the time period of December 2014 through  
6 November of 2015?

7 **A.** That is correct.

8 **Q.** And how much money are you asking this Honorable Court  
9 to award to Mr. Lemley?

01:42:51 10 **A.** \$20,817.22.

11 **Q.** Taking a look at the damage model for Phillip Owens --  
12 Mr. Owens is also an opt-on plaintiff on this matter -- on  
13 average, how many hours per workweek are you asking this  
14 Honorable Court to compensate Mr. Owens for?

01:43:16 15 **A.** 60.

16 **Q.** And that's for the pay period of June 2016 through  
17 September of 2016?

18 **A.** That is correct.

19 **Q.** And how much money are you asking this Honorable Court  
01:43:24 20 to award to Mr. Owens?

21 **A.** \$4,160.25.

22 **Q.** Taking a look at the damage model for Darylann  
23 Perkowski, how many hours per workweek are you asking this  
24 Honorable Court to award to Ms. Perkowski?

01:43:44 25 **A.** 60.

1 Q. And that's for the pay period of July 2015 through  
2 January of 2016?

3 A. That is correct.

4 Q. And how much money are you asking this Honorable Court  
5 to award to Ms. Perkowski?

6 A. \$13,618.29.

7 Q. And if you could take a look at the exhibits in our  
8 notebook that are marked exhibit numbers -- in looking at  
9 the exhibits, 3 through 33, do those appear to be the --  
10 do those appear to include the pay records for the opt-in  
11 plaintiffs that you have just testified about?

12 A. 3 through 33?

13 Q. Well, I'll go through them. Exhibit 4 are the pay  
14 records for Mr. Mark Brady.

15 A. Okay.

16 Q. Exhibit 6 are the pay records for opt-in plaintiff  
17 Trevor Clinch.

18 A. Okay.

19 Q. Exhibit 12 are the pay records for opt-in plaintiff  
20 Robert Harrington.

21 A. Yes.

22 Q. Exhibit 14 are the pay records for opt-in plaintiff  
23 Andrea Johnson.

24 A. Yes, ma'am.

25 Q. Exhibit 16 are the pay records for opt-in plaintiff

1 Travis John Lemley.

2 **A.** Yes, ma'am.

3 **Q.** Exhibit 20 are the pay records for opt-in plaintiff  
4 Phillip Owens.

01:45:27 5 **A.** That's correct.

6 **Q.** And then Exhibit 22 are the pay records for opt-in  
7 plaintiff Darylann Perkowski.

8 **A.** That is correct.

9 **Q.** And does Exhibit 58, Exhibit A to Exhibit 58, does  
01:45:46 10 that reflect the total amount of damages that you are  
11 asking this Honorable Court to award to the plaintiffs in  
12 this matter for unpaid overtime wages and liquidated  
13 damages?

14 **A.** Did you say eight to 58?

01:46:00 15 **Q.** Exhibit 58, Exhibit A to Exhibit 58.

16 **A.** Yes, ma'am, it does.

17 THE COURT: What is the total? I'm sorry.

18 THE WITNESS: The total amount?

19 MS. WILLS: I'll put up that slide for you, Your  
01:46:18 20 Honor. I will tell you that this does not include all of  
21 the -- this is the summary of damages and, as noted here,  
22 it does not include all of the pay records for Lauren  
23 Young Hafner, who is still employed by the company. It's  
24 only through November of 2018, and the additional pay  
01:46:38 25 records have not been produced to us.

1 BY MS. WILLIS:

2 Q. But based on what we have to date, can you please tell  
3 Your Honor what the total damages would be.

4 A. Your Honor, it's \$256,348.43.

01:46:52 5 THE COURT: Okay. This -- I mean, it sounds like  
6 both sides are acknowledging that the time sheets are not  
7 accurate for different reasons. You're saying that the  
8 system put them in. You're saying that the employees were  
9 told not to write down more than that.

01:47:12 10 MS. VALDERRAMA: No. I'm sorry, Your Honor. I  
11 don't mean to interrupt. We are not saying the system put  
12 them in. We're saying that the line on the time sheets  
13 that has a date and hours for the exempt employees, we're  
14 saying that's not a Boxer number. We're saying that's  
01:47:30 15 part of ADP's back office.

16 THE COURT: That's what I'm saying, too. You are  
17 not saying it's the correct number?

18 MS. VALDERRAMA: What we are saying is it's the  
19 number that the employees actually put in, because each  
01:47:40 20 one of those numbers was put in -- the number eight was  
21 put in by the employee. We're saying that is an accurate  
22 number.

23 MS. WILLIS: Your Honor, we find that  
24 representation to be preposterous, especially given the  
01:47:57 25 testimony that was given right here in this courtroom that

1 we put up on the screen from the director of human  
2 resources that said they know the time records aren't  
3 right. We know they didn't start at that time.

4 THE COURT: I don't think -- from what I have  
01:48:08 5 heard thus far, I don't think we can treat the time  
6 records as being accurate, that everybody worked to the  
7 minute 8:00 a.m. to 4:00 p.m.

8 MS. VALDERRAMA: I'm sorry. I'm not  
9 understanding the -- the time records are not there to set  
01:48:20 10 the time limit when the exempt employees have to work.  
11 Exempt employees do not have to be -- they do not have to  
12 record a start and end time.

13 THE COURT: Where do we look to find that  
14 information then?

01:48:32 15 MS. VALDERRAMA: The hours that the employee put  
16 in?

17 THE COURT: That they actually worked, yeah.

18 MS. VALDERRAMA: We're looking at the audit  
19 record, and it's the actual number put in by the employee  
01:48:41 20 where they put the eight. Where it populates it with an  
21 8:00 to 4:00, that's not a true number.

22 THE COURT: I know. Where do I look to find the  
23 true number?

24 MS. VALDERRAMA: The true number you look at the  
01:48:53 25 eight or the 14 or the 11 or whatever it is that's in the

1 record. There has been nothing that's been presented so  
2 far, Your Honor, to indicate that, apart from Ms. Shelby's  
3 testimony, that there is any work, other than for her,  
4 after hours that's required of these class members.

01:49:09

5 MS. WILLS: Your Honor, I beg to differ, and we  
6 can certainly stand here and put on more evidence, if Your  
7 Honor needs it. We're trying not to belabor the point.  
8 It's very, very, very clear their HR director sat here and  
9 said, yeah, no, these time records are not accurate.

01:49:23

10 And the law provides that when an employer fails to  
11 keep accurate time records then all we need, frankly, is  
12 testimony from the worker.

13 THE COURT: That's where I was going. What this  
14 case is about really is credibility.

01:49:36

15 MS. WILLS: It is.

16 MS. VALDERRAMA: I'm sorry?

17 THE COURT: What this case is about is witness  
18 credibility.

19 MS. VALDERRAMA: A great deal, yes.

01:49:44

20 MS. WILLS: It is, Your Honor. And we believe  
21 that Boxer Property has been very disingenuous to this  
22 Court. We're going to put on more evidence that those  
23 cameras did record. They have sat here and repeatedly  
24 have argued that, oh, no. No. The cameras were just  
25 there. First, they weren't even on them. Then they

01:50:03



1 didn't look at them, and then they didn't record them.

2 They have made misrepresentation after  
3 misrepresentation to this Court, and I think I just heard  
4 counsel trying to somehow, despite everything we have all  
01:50:15 5 been listening to all morning, stretch the truth to  
6 somehow suggest that these time records are in any way  
7 accurate when they are not. They are clearly not. Some  
8 of them 12:00 a.m. to 8:00 a.m. They don't even make  
9 sense.

01:50:28 10 The director -- the national director of human  
11 resources said, We know they are not accurate. Those  
12 words came out of her own mouth. That's why I played that  
13 video clip for the Court this morning. She right there in  
14 the witness stand in this federal courtroom and said that.  
01:50:44 15 No, we know they are not accurate.

16 MS. VALDERRAMA: Your Honor, I don't understand  
17 how a line on an audit sheet for a time entry -- because  
18 the Court can't see the actual application where there is  
19 something that has a drop-down box and the employee puts  
01:51:00 20 it in.

21 But I'm having a hard time understanding how no  
22 testimony about -- there has been no testimony that any  
23 plaintiff entered the number 8:00 a.m. to 4 :00 p.m.  
24 That's -- no plaintiff has said they did it.

01:51:17 25 THE COURT: I'm assuming that number is

1 irrelevant to our concerns here.

2 MS. VALDERRAMA: It is. It's an artifact.

3 THE COURT: Okay. That's all I wanted to  
4 establish. That's all I wanted to establish.

01:51:29 5 MS. WILLS: At this time, Your Honor, we'll pass  
6 the witness.

7 THE COURT: Okay. Cross.

8 **CROSS-EXAMINATION**

9 BY MS. VALDERRAMA:

01:52:29 10 **Q.** All right. Ms. Shelby, you and I have met before at  
11 deposition. Do you recall that?

12 **A.** I do.

13 **Q.** Do you recall at the deposition that you testified  
14 under oath? You took an oath to tell the truth?

01:52:40 15 **A.** Yes, I do.

16 **Q.** All right. As I am understanding it from your  
17 testimony, you are saying that you are entitled to be paid  
18 for 30 hours of overtime for every week in which you were  
19 employed by Boxer Property; is that correct?

01:52:53 20 **A.** I believe in my testimony in the deposition statement  
21 was that -- approximately that I worked 70 hours a week.  
22 Excuse me.

23 **Q.** All right. Your lawyer just put up an Exhibit A with  
24 numbers on it. I'm asking whether or not it is your  
01:53:11 25 testimony that as a matter of fact that the hours that you

1 worked every week that you worked for Boxer Property were  
2 -- included overtime of at least 30 per week because I  
3 think you were here when your lawyer said that that was a  
4 conservative estimate?

01:53:26

5 **A.** Yes.

6 MS. WILLS: (Standing.)

7 **A.** Sorry. Let me elaborate that. So, yes, it is  
8 approximately 70 hours a week. It could have been more.

9 BY MS. VALDERRAMA:

01:53:39

10 **Q.** Okay.

11 **A.** So on some weeks it may have been an hour less. So  
12 70 hours is a conservative estimate, yes, ma'am; and that  
13 was my testimony in the deposition.

01:53:53

14 **Q.** All right. Do you remember that you signed a  
15 declaration in this lawsuit?

16 **A.** Yes, ma'am.

17 **Q.** And do you remember that in that declaration -- you  
18 stated in that declaration that you entered hours into  
19 your time sheets?

01:54:03

20 **A.** I don't recall saying that.

21 **Q.** Would you take a look at Exhibit 14. Do you see that  
22 at Page 14 you are talking about your time sheets? Do you  
23 see that?

24 **A.** Yes, ma'am.

01:54:41

25 **Q.** All right. And you executed this deposition or you

1 signed it on February 27th of 2017, correct?

2 **A.** Yes, ma'am.

3 **Q.** Did you type up this declaration?

4 **A.** I did not type that, no.

01:54:50 5 **Q.** All right. So you signed it, though, and you read it  
6 before you signed it?

7 **A.** Yes, ma'am.

8 **Q.** And it says that while there were occasions -- read  
9 along with me on 14. While there were occasions in my  
01:55:00 10 employment --

11 THE COURT: Too fast. There were occasions...

12 BY MS. VALDERRAMA:

13 **Q.** While there were occasions in my employment in which I  
14 recorded more than 40 hours per week on my time sheets,  
01:55:10 15 that means you recorded more than 40 hours per week,  
16 correct? That's what it said?

17 **A.** That's what it states.

18 **Q.** Was it accurate? Was it truthful when you said you  
19 recorded more than 40 hours?

01:55:19 20 **A.** When I recorded more than 40 hours?

21 **Q.** Yes, ma'am.

22 **A.** Well, of course. I wouldn't have lied. If I worked  
23 more than 40 hours, I worked more than 40 hours.

24 **Q.** All right. I'm talking about the time sheet entry  
01:55:31 25 that says in that Paragraph 14 that you entered into your

1 time sheet or you recorded in your time sheet more than  
2 40 hours during a workweek, correct?

3 **A.** Yes.

4 **Q.** All right. And then it says those time sheets do not  
5 accurately reflect all hours that I worked during those  
6 weeks. And you are referring to the specific weeks where  
7 you entered time that was in excess of 40?

8 **A.** That's correct.

9 **Q.** Why would you enter time that's in excess of 40 if you  
10 have been told to enter eight?

11 **A.** Okay. Well, if I had an issue maybe with a supervisor  
12 and they wanted to know what I was there for, how long I  
13 was there for that day. Honestly, I don't really recall.  
14 I will say that my comment in regard to the information  
15 not being accurate was also reflective of the fact that I  
16 never recorded my working lunches and I never recorded any  
17 time after and I was not consistent with recording that I  
18 was working late every single day.

19 **Q.** The question is: For the time entries that you put  
20 in, you picked the number to put in, are you telling the  
21 Court that those entries are not accurate, that you worked  
22 more time than the time you put in on your time sheets?

23 **A.** Yes.

24 **Q.** And your explanation for that is that sometimes your  
25 supervisor talked to you about something and you wanted to

1 put it in at that time?

2 **A.** Yeah.

3 MS. VALDERRAMA: (addressing Ms. Galindo) Can  
4 you put up Exhibit 2.

01:56:56 5 BY MS. VALDERRAMA:

6 **Q.** So these are the time card reports with notes for you.  
7 If you look at -- this is the very first pay period in the  
8 time frame that is applicable for the case that's before  
9 the Court. Do you see that?

01:57:16 10 **A.** I do.

11 **Q.** All right. Do you see that in this very first, at the  
12 very beginning you are already putting in time entries  
13 that are greater than eight. You have got 8.5 for Monday,  
14 June 9. You have got 8.5 for Tuesday, June 10th. You  
01:57:32 15 have got 8.5 for June 11. You have got 8.5 for June 12.  
16 You go all the way down until June 19th.

17 MS. VALDERRAMA: (addressing Ms. Galindo) Can  
18 you put that back, please.

19 BY MS. VALDERRAMA:

01:57:52 20 **Q.** So do you see that where you have entered that from  
21 the very first day?

22 **A.** I see that information, yes.

23 **Q.** You are saying that when you put that time in there,  
24 you just made it up?

01:58:00 25 **A.** What I'm saying is I didn't leave work at 4:00. So

1 that could not possibly be right because the time  
2 reflected on that sheet says that I worked from 8:00 a.m.  
3 to 4:00 p.m., and I would have never left the office at  
4 4:00 p.m. unless it would have been a doctor appointment  
5 or something that I prearranged with my supervisor.

01:58:17

6 So, therefore, based on that, if I had -- if that was  
7 accurate and it said 7:30 to 8:00 p.m., then you would see  
8 that those hours would be reflective; and that would have  
9 only been of my hours in the office without recording any  
10 lunch times and without recording any after-hours times or  
11 weekend times.

01:58:36

12 **Q.** Ms. Shelby, I just want to make sure I'm  
13 understanding. You put in the 8.5, correct?

14 **A.** I don't know that I put in the 8:5. I don't know that  
15 I put that in or that I put in the 8:00 to 4:00 or how  
16 that actually came to that.

01:58:50

17 **Q.** All right. So --

18 **A.** I know that I didn't work till 4:00 p.m., and I know I  
19 didn't work to 4:30 p.m. ever --

01:59:00

20 **Q.** You testified --

21 **A.** -- without a doctor appointment or situation where I  
22 prearranged that.

23 **Q.** You testified that at the beginning of this that you  
24 did not recognize those entries that have numbers on them,  
25 correct?

01:59:12

1 **A.** That's what I'm saying. I don't -- I don't recognize  
2 that. I don't know why that would say 8.5.

3 **Q.** Are you now saying that you actually put in 8:00 a.m.  
4 as a start time when you logged your time?

01:59:22

5 **A.** That is what I'm telling you. I don't know. It's so  
6 inaccurate that I can't really even have an opinion about  
7 it because of the different times. Just like I didn't  
8 work 12:00 a.m. to 8:00 a.m.

01:59:38

9 **Q.** All right. For a moment, just for a moment

10 Ms. Shelby, ignore that column --

11 **A.** Uh-huh.

12 **Q.** -- and accept for a moment these are audit records  
13 that show -- that are the records that are used to show  
14 the hours that an employee put into their time card. All  
15 right?

01:59:52

16 MS. WILLS: I'm going to object. I think that's  
17 an improper hypothetical. She is asking her to accept her  
18 reality rather than her giving testimony.

02:00:02

19 THE COURT: Well, it's cross. I'm going to allow  
20 it. I'm going to allow it.

21 BY MS. VALDERRAMA:

22 **Q.** All right. So, Ms. Shelby, just ignore that column.  
23 You don't know why that column is there; is that correct?

24 **A.** What do you mean I don't know why it's there?

02:00:13

25 **Q.** You don't know why that column is there. You have



1 testified it doesn't make any sense to you. You don't  
2 know why it's there?

3 **A.** Right.

02:00:27

4 **Q.** In the column that says hours that has variations in  
5 the amount of time that's entered, do you agree that you  
6 put in the variances and time?

7 **A.** Not necessarily.

8 **Q.** Well then who would have put in 8.5 hours for you?

02:00:38

9 **A.** Well, I know that I'm not the only person who had  
10 access to my time.

11 **Q.** So you just don't know?

12 **A.** I know that coordinators have access to turn in your  
13 time.

02:00:48

14 **Q.** Are you saying that the coordinators -- is it your  
15 testimony today that the coordinators put in 8.5 hours for  
16 you?

17 **A.** I know that whenever I talked to them in the past they  
18 said -- one of them. Okay. One of them told me that they  
19 only put in eight hours a day. That doesn't mean that --  
02:01:00 20 in the period of time that I worked there, there were, I  
21 think, three different coordinators -- that each one of  
22 them did that. I don't know. I only know what the one  
23 told me.

02:01:13

24 **Q.** All right. And you said one of the coordinators told  
25 you that they only put in eight hours for you?

1 **A.** Right.

2 **Q.** And the other coordinators, you don't know what they  
3 put in for you?

02:01:24

4 **A.** No. Because if you'll reflect to the e-mail that she  
5 put in as an exhibit earlier on when she, Lauren Reis  
6 Shelton, said that she had already turned in my time, she  
7 did not tell me what she had put in.

8 **Q.** Well, let's look at that. We'll just jump to that.

02:01:40

9 MS. VALDERRAMA: (addressing Ms. Galindo) Can we  
10 look at the Plaintiffs' Exhibit Number -- I believe it's  
11 283. No. That's not it.

12 **A.** That's an e-mail from 6:37 p.m.

13 BY MS. VALDERRAMA:

02:02:09

14 **Q.** No. I'm sorry. I have the wrong one up there. I  
15 apologize. It's 282. We'll come back. We'll come back  
16 to that.

17 All right. So you are saying from time to time the  
18 coordinators would put in time for you?

19 **A.** Yes.

02:03:09

20 **Q.** And the circumstances of when they put time in for  
21 you, what was that? Was that when you failed to put in  
22 your time yourself?

23 **A.** Yes.

02:03:18

24 **Q.** All right. So at the point in time the coordinators  
25 were putting time in for you, it's because you have not

1 met the requirements of submitting your time yourself.

2 And so there is somebody who is having to make the  
3 difference for you and put it in so you can get paid?

4 **A.** Correct.

02:03:29

5 **Q.** All right. And when they put the time in, they were  
6 trying to make sure that your payroll was met, correct?

7 **A.** Correct.

8 **Q.** And these are not your supervisors. They were not  
9 people telling you how much time that you were supposed to

02:03:40

10 put in, correct?

11 **A.** That's correct.

12 **Q.** They were doing you a favor so that your time sheets  
13 would at least go through and trigger getting you paid?

14 **A.** Correct.

02:03:48

15 **Q.** All right. In connection with your work for Boxer  
16 Property, do you remember there is the Boxer bible and the  
17 standards that you said you always followed?

18 **A.** Yes.

19 **Q.** All right. Did you read that?

02:04:06

20 **A.** What is that?

21 **Q.** Did you read the Boxer bible and try to follow it?

22 **A.** I tried my best, yes.

23 **Q.** All parts of it?

24 **A.** I tried my best.

02:04:15

25 MS. VALDERRAMA: All right. Could we get

1 Exhibit 13.

2 MS. GALINDO: Defendant's?

3 MS. VALDERRAMA: Defendant's.

4 BY MS. VALDERRAMA:

02:04:37

5 **Q.** All right. Will you take a look at Exhibit 13 in  
6 front of you?

7 **A.** I am.

8 MS. VALDERRAMA: (addressing Ms. Galindo) Roll  
9 it down. I need 13-1, please. At the top, please.

02:04:40

10 BY MS. VALDERRAMA:

11 **Q.** All right. Do you see --

12 MS. WILLS: May I just say, Your Honor, I want to  
13 be clear. We didn't cover the Boxer bible with this  
14 witness. This is cross. Is she doing her full

02:05:06

15 examination of this witness? Because we didn't get into  
16 the Boxer bible.

17 THE COURT: It goes to credibility though. She  
18 is entitled to do it.

19 MS. WILLS: Okay.

02:05:13

20 BY MS. VALDERRAMA:

21 **Q.** All right. So with respect to the Boxer bible, do you  
22 see where it says "1.5.12.4 dishonesty"?

23 **A.** Yes, ma'am.

24 **Q.** Do you see under the first bullet point it considers  
25 dishonesty to be falsifying time sheets or other company

02:05:25

1 records?

2 **A.** Theft of company, tenant, or another employee.

3 **Q.** The second bullet point, please.

4 **A.** Falsifying time sheets or other company records.

02:05:39 5 **Q.** Is that correct?

6 **A.** I see that, yes.

7 MS. VALDERRAMA: (addressing Ms. Galindo) All  
8 right. Can you hold that up. Up.

9 BY MS. VALDERRAMA:

02:05:47 10 **Q.** All right. If you take a look at the time and  
11 attendance policies and it talks about time and attendance  
12 tracking, which is 1.5.13.2, that says, "Attendance is  
13 recorded daily by each employee and verified by his or her  
14 manager. Attendance records are company records.

02:06:07 15 Exercise care in accurately recording the hours worked,  
16 overtime hours, and absences."

17 Do you see that?

18 **A.** I do see that.

19 **Q.** And then if you move down to the next bullet point, go  
02:06:18 20 down to the one that says lunchtime. It says lunchtime is  
21 one hour unless otherwise indicated by a supervisor. Do  
22 you see that?

23 **A.** I do.

24 **Q.** And then if you go down to the last bullet point, it  
02:06:28 25 talks about exempt salaried employees. Do you see that?

1 **A.** I do.

2 **Q.** It says exempt salaried employees are required to log  
3 their total daily hours worked or not worked, whether paid  
4 time off or unpaid, and verify same each pay period.

02:06:45

5 Business trips, vacation, PTO days must be recorded on the  
6 online time card within the note section.

7 Do you see that?

8 **A.** I do see that.

02:06:58

9 **Q.** And that specific directive for exempt or salaried  
10 employees was that you log your total daily hours worked  
11 or not worked, correct?

12 **A.** I do see that, yes.

13 **Q.** So that was a directive of the Boxer bible that you  
14 say is so important in being followed at Boxer, correct?

02:07:10

15 **A.** I do see that, yes.

16 **Q.** All right. All right. I need you to go to --

17 MS. VALDERRAMA: (addressing Ms. Galindo) Roll  
18 it down, please.

19 BY MS. VALDERRAMA:

02:07:29

20 **Q.** Do you see 1.5.13.5?

21 **A.** Yes.

22 **Q.** It says "working from home."

23 **A.** Yes, I see that.

02:07:38

24 **Q.** It says, "Working from home is not permitted without  
25 the explicit written approval of the president, CFO, COO,

1 or vice president and is strongly discouraged. In most  
2 cases, the underlying reason for requesting working from  
3 home warrants taking the day off. Approval will be  
4 provided only under very limited circumstances. Notifying  
5 your supervisor or any of the approval authorities above  
6 that you or another employee is working from home today is  
7 not sufficient. You must obtain actual explicit approval.  
8 Otherwise, this time will be treated as a day off and PTO  
9 will be charged."

10 Did you ever get any approvals to work from home?

11 **A.** Well, I think the directive that we were required to  
12 answer our phones 24 hours a day was pretty much an open  
13 book to say you are working from home. And the fact that  
14 our supervisors knew that we were working from home and  
15 had no problem with that, they knew that we did our  
16 Craigslist ads. They knew that we took phone calls. I  
17 would think that that would be considered approval.  
18 Whether it was verbal or whether it was written, they were  
19 aware.

20 **Q.** All right. So you are saying that you didn't get any  
21 written approval from any of these individuals, but you  
22 believe that the requirement, as a leasing representative,  
23 that you have your phone, your Boxer-issued phone on your  
24 person that that was sufficient for you to work from home?

25 **A.** I'm saying that's directing me to work. Otherwise, I

1 would have turned that phone off and left it on my desk --

2 **Q.** In the working from home --

3 **A.** -- because that was not permissible.

4 **Q.** All right. So you believe that this working from home  
5 provision that says you shouldn't work from home, it  
6 doesn't apply to you because you had a Boxer-issued phone  
7 and were asked to answer calls that may have come in in  
8 this evening?

9 **A.** Yes. I was required to work from home. So if I was  
10 required to work from home, then why would I have any  
11 reason to think that anything else I would do would not be  
12 permissible when I am working from home.

13 **Q.** So the long and short of it is you didn't get any  
14 approval. You just based it on the fact that you had your  
15 telephone on you?

16 **A.** I didn't have to get approval. It was a policy. I  
17 was required to do it.

18 **Q.** There is nothing in the policy that says you are  
19 supposed to do Craigslist from home, is there?

20 **A.** When our director stands up in a meeting and says, If  
21 people don't answer their calls they are going to be  
22 fired, I would think that that would override anything in  
23 this book.

24 **Q.** I see. So you are saying that the statement that you  
25 are supposed to answer your phone calls means that you are



1 supposed to do Craigslist work at home?

2 **A.** I would say so, yes. Because the only way that we  
3 could get to the point that they wanted us to be was to do  
4 those from home. And they knew we were doing them from  
5 home. As a matter of fact, I got a bonus one month  
6 because I had done so many that it flared up my carpal  
7 tunnel and I had to wear two casts on my hands for about  
8 three weeks because I couldn't feel my fingers.

9 And my supervisor at the time, Jerry Watson, went to  
10 the rest of the team and actually said, Look at this.  
11 Long at these ads that she is posting from home. She  
12 needs a bonus.

13 So it was acknowledged amongst the actual regional  
14 supervisors that we were doing that and for sure for  
15 myself -- and I know for everyone else -- they would all  
16 talk about it in the meetings amongst our supervisors that  
17 they would never do hardly anything.

18 If they were watching TV, they were posting Craigslist  
19 ads. It was important. It was very important. And we  
20 were directed to work from home. It doesn't matter what  
21 that says right there because when your supervisor tells  
22 you you are going to do something under duress, are you  
23 not going to do it, irregardless of what is in that book?  
24 You are being instructed to do something, and you are not  
25 going to have your job if you don't.

1 Q. All right. So my understanding is that when your --  
2 that you understood that you were going to work from home  
3 because you knew that you had the opportunity for a bonus  
4 if you put in more Craigslist ads. Is that what you are  
5 saying?

02:11:36

6 A. We did get a bonus, but it was required. We had  
7 quotas.

8 Q. Your quota was 100 Craigslist ads per month. Is that  
9 accurate?

02:11:45

10 A. Yes. That is accurate.

11 Q. I want to step back for a moment. You have said that  
12 you worked from 8:00 until 8:00 every day.

13 A. Approximately, is what I said.

14 Q. Well, sometimes you say you may have worked later.

02:11:58

15 A. I could have, but I said approximately. So that may  
16 have meant I may have left at 7:30 one day and I may have  
17 worked to 8:30 on another. But an approximate day would  
18 have been 8:00 to 8:00.

19 Q. I want to make sure I am understanding your testimony.  
20 You understand you are under oath?

02:12:12

21 A. I do understand.

22 Q. All right. And it's your testimony that you  
23 specifically recollect that you, Sherry Shelby, worked  
24 from 8:00 a.m. until 8:00 p.m. every day and then went  
25 home and worked for two hours more?

02:12:26

1 **A.** Approximately, yes.

2 **Q.** When you say approximately, are you saying that there  
3 may have been days that you didn't work at all like that?

4 **A.** Let's clarify something on the two hours a day. What  
5 I had said in the initial -- in the initial deposition, I  
6 believe, was that the additional ten hours a week was over  
7 the seven-day week. So not necessarily specifically two  
8 hours every day. It could have been spread over a  
9 seven-day period.

10 **Q.** Ms. Shelby, I don't mean to interrupt you, but I would  
11 like an answer to that actual question.

12 THE COURT: You have got to let her finish. She  
13 has taken an oath to tell the whole truth.

14 MS. VALDERRAMA: All right.

15 THE COURT: You can go ahead and answer.

16 **A.** What I was trying to tell you was it may not have been  
17 specifically two hours a night, but it was approximately  
18 ten hours over a seven-day period because we did do work  
19 every day.

20 Now, that could have been Craigslist ads. It might  
21 have been checking e-mails. It might have been taking  
22 calls. It could have been a number of all those things at  
23 one time. So that ten hours would have been spread out.

24 It may have been one particular week that I worked  
25 four hours on a Saturday and maybe I only did -- you know,

1 because I did go in on a Saturday, maybe I only did six  
2 hours during the week. So there were times when that  
3 could have fluctuated.

02:13:39 4 But, yes, ma'am. On an average, that is what I  
5 worked, approximately; and I didn't punch a time clock.  
6 That was not available. We did not have a time clock. If  
7 we would have had a time clock, we could have punched that  
8 time clock and we could have given a more accurate  
9 reflection based on -- because, obviously, these time  
02:13:56 10 reports are not accurate. When you look at any of them,  
11 they are not accurate.

12 BY MS. VALDERRAMA:

13 **Q.** You are testifying to your specific memory that these  
14 are the facts that you worked that many hours every day of  
02:14:05 15 every week that you were employed by Boxer Property  
16 Management Corporation?

17 **A.** Repeat that.

18 **Q.** That you worked 30 hours of overtime or more every  
19 week that you were employed by Boxer Property Management  
02:14:21 20 Corporation, as you have asked for payment from the Court?

21 **A.** I think specifically what I said was that I worked  
22 approximately 70 hours a week was my testimony.

23 **Q.** Answer my question then. My question is: Are you  
24 claiming you worked 30 hours of overtime, which is the  
02:14:37 25 claim that you are here for, at least 30 hours of overtime

1 every week that you were employed by Boxer Property  
2 Management Corporation? Is that --

3 **A.** Approximately, yes.

4 **Q.** And that's your -- you are testifying from your own  
5 memory that those are the facts of what you worked?

6 **A.** Unless I had a doctor appointment or unless I had a  
7 PTO day or vacation time. I will clarify that, yes.

8 **Q.** Oh, so there are workweeks where you didn't work  
9 30 hours of overtime?

10 **A.** Well, if you were on vacation you couldn't work  
11 overtime. You are on vacation.

12 **Q.** Oh, I see. So which of those weeks that were just  
13 posted up there were weeks that you were on vacation and  
14 that you are not claiming to have been working 30 hours of  
15 overtime that week?

16 **A.** Well, you can see what a PTO day is. It's on there.

17 **Q.** Do you know which weeks?

18 **A.** No. I couldn't.

19 **Q.** Have you ever looked at the records of your  
20 employment?

21 **A.** What records?

22 **Q.** The time sheet records of your employment to try to  
23 discern how many hours you worked?

24 **A.** I've glanced through them. Yes.

25 **Q.** Have you done any kind of a calculation?

1 **A.** Based on knowing what time I got there and what time I  
2 left? Those were my calculations. That's how I based it.

3 **Q.** Do you have any records that show that you worked from  
4 8:00 to 8:00 every day and then worked for approximately  
5 two hours after that?

02:15:59

6 **A.** The only records that I can show were my exemplary  
7 employment records and, also, my production speaks for  
8 itself. There is no way that I could have done my job  
9 without working those kind of hours and be able to be as  
10 productive of an employee as I was.

02:16:17

11 **Q.** Okay. So let's -- rather than talk about your  
12 productivity and your general capability as you see  
13 yourself as a leasing rep, let's talk about documents.

14 The question was: Do you have any documents that can  
15 show that you worked from 8:00 in the morning until 8:00  
16 at night every day at Boxer Property and then two hours  
17 after that so that you are entitled to at least 30 hours  
18 of overtime for every week that you were employed by Boxer  
19 Property?

02:16:33

20 **A.** The only documents that I would think would be what  
21 you are looking for are going to be where you can see some  
22 of my e-mails being later in the evening, 7:30 and on.  
23 Whereas after I would have finished e-mails, that's when I  
24 would have processed paperwork and done things like that.  
25 So, yes, there are documents that will show that I was in

02:16:48

02:17:05

1 my office sending e-mails and things like that.

2 **Q.** And have you reviewed and collected those showing that  
3 you were at the office sending e-mails at 8:00 in the  
4 evening?

02:17:17 5 **A.** I believe that my attorney has submitted those.

6 **Q.** All right. I'm going to ask you. Are you saying that  
7 you sent e-mails from the office at 8:00 in the evening on  
8 every day that you worked for Boxer Property?

9 **A.** I'm not saying every day I sent an e-mail at that

02:17:34 10 time. I'm saying there are some records. The question  
11 was did I have any documents. Any documents was the  
12 question.

13 **Q.** Right.

14 **A.** The question was not every day did I have documents.

02:17:42 15 So, no, I'm not going to say that every day. But as a  
16 rule of thumb, you can see a general flow of the type of  
17 work schedule that I kept by looking at those documents  
18 and knowing that that was not -- if I sent an e-mail, I  
19 didn't get up and just walk out the door after that. I  
02:17:59 20 still had work.

21 I would complete my Salesforce tasks. I would  
22 complete my e-mails. And then the last thing I would do  
23 would be to process my paperwork and clean up my office so  
24 that it would be clean and refreshed for the next day.

02:18:12 25 **Q.** I thought you cleaned up your office on Saturdays.

1 **A.** Sometimes I did, yes. Yes.

2 **Q.** So going back to the question, the only paperwork that  
3 you have that would show you worked are the documents that  
4 belong to Boxer Property Management Corporation?

02:18:23 5 **A.** That would be correct.

6 **Q.** All right. You have no other documents that might  
7 tend to show you worked that amount?

8 **A.** No, ma'am.

9 **Q.** And you are relying solely on what you perceive to be  
02:18:32 10 your stellar employment as an employee?

11 **A.** No. I'm not saying solely. My supervisor was aware  
12 that I was there. So I can't say that I'm relying solely  
13 on that.

14 **Q.** All right. Did you see the video that we showed today  
02:18:48 15 when you went over to Paycom?

16 **A.** Do you mean did I see it today?

17 **Q.** No, ma'am. When you were there, did you see the  
18 video?

19 **A.** You know, I don't recall seeing that. They just had  
02:18:57 20 started -- they had hired the gentleman, and I don't  
21 remember his name, that is doing the training modules not  
22 long before I left there. And that was all in the process  
23 of working on that. I'm not saying I did or I didn't. I  
24 do not recall seeing that. I actually don't really recall  
02:19:13 25 not working off of ADP. So I think if that came in, it



1 must have came in at the very end of my employment.

2 **Q.** I'm sorry. You say you don't remember the change from  
3 ADP to Paycom?

4 **A.** That's what I'm telling you. I think that must have  
5 been at the very end of my employment because I don't  
6 recall that.

7 MS. VALDERRAMA: (addressing Ms. Galindo) Can  
8 you get Exhibit 3. Go to -- I'm sorry. Exhibit 2, 2-21.  
9 BY MS. VALDERRAMA:

10 **Q.** All right. Do you see that September 12, 2013, is the  
11 first time it's changed to the Paycom system?

12 **A.** What is that? December what?

13 **Q.** That September 12 of 2015 is the first pay period.

14 **A.** Okay.

15 **Q.** Right?

16 **A.** So, yeah. That was towards the end or -- let's see.  
17 Yeah. That was toward the end of my employment.

18 **Q.** Your employment ended in February of the following  
19 year, correct?

20 **A.** Yes. About five months later. Toward the end. About  
21 five and a half.

22 **Q.** All right. And during those five months you are  
23 saying that you don't believe you saw the training that  
24 all the employees at Boxer Property received for purposes  
25 of knowing how to use this system?

1 **A.** I'm not telling you -- I don't recall. I'm telling  
2 you I don't recall.

3 **Q.** You don't remember getting any sort of exemption, do  
4 you?

02:20:54

5 **A.** Exemption from?

6 **Q.** From taking the training for the new system.

7 **A.** I don't know that it was required, and I don't know  
8 that I received it. I don't remember. That's all I'm  
9 telling you. I'm not denying that I did or I didn't. I  
10 don't recall.

02:21:08

11 **Q.** All right. Going back to the issue of the work that  
12 you say that you did, You identified some specific tasks  
13 that you say were performed by you. Before we actually  
14 get into that work and talk about how much -- what your  
15 responsibilities were in that, I want to go back and  
16 clarify some of the testimony that you gave.

02:21:31

17 You testified that you believe that Andrew Segal owned  
18 some Boxer Property building?

19 **A.** You want me to clarify why I testified to that?

02:21:47

20 **Q.** No. I want to know whether you are testifying do you  
21 know whether Andrew Segal owned a Boxer Property building?

22 **A.** I am telling you that in that testimony that I was  
23 told he did own some of the buildings.

24 **Q.** And who told you he owned some of the buildings?

02:22:01

25 **A.** Managers, regionals, yes.

1 Q. Are these Andrew Segal himself?

2 A. No.

3 Q. All right. So from some scuttlebutt that's floating  
4 around from managers who work for Boxer Property

02:22:16

5 Management Corporation, you are going to testify in court  
6 that you believe it's a fact that Andrew Segal owned these  
7 buildings?

8 A. Well, I wouldn't refer to my regionals as scuttlebutt;  
9 but I would say that they had a direct connection to know  
10 what exactly was -- and I can elaborate as to why, if you  
11 want me to do that.

02:22:31

12 Q. No. I'm asking whether you have any personal  
13 knowledge that those buildings were actually owned by  
14 Andrew Segal?

02:22:43

15 A. I was told that Andrew Segal owned the 1120 NASA  
16 Parkway building.

17 Q. All right. When you were deposed, do you remember me  
18 talking to you about the ownership of the NASA Parkway  
19 building?

02:22:55

20 A. Uh-huh.

21 Q. Do you remember testifying that you did not know who  
22 owned that building?

23 A. Let me tell you. I'm going to elaborate, if you'll  
24 let me elaborate.

02:23:02

25 Q. Did you testify in your deposition under oath that you

1 did not know who owned that building?

2 **A.** I did.

3 **Q.** All right.

4 **A.** I'll elaborate.

02:23:08

5 THE WITNESS: Judge, can I elaborate on that?

6 BY MS. VALDERRAMA:

7 **Q.** You haven't been employed at Boxer Property Management  
8 Corporation since your deposition, have you?

9 **A.** No.

02:23:15

10 **Q.** All right. Now, you have told the judge many times  
11 that you had to carry your phone with you and that you had  
12 to answer calls as a result of carrying your phone with  
13 you. Do you recall that?

14 **A.** I do.

02:23:42

15 **Q.** And do you remember how many calls you had to answer  
16 each day?

17 **A.** I do not.

18 **Q.** Do you have any recollection of how many calls per day  
19 you had to answer?

02:23:50

20 **A.** Whatever was required. When it rang, I had to answer  
21 it and I could not tell you the number of calls because I  
22 did not write them down and I did not keep track of them.

23 **Q.** And so you can't say on any particular day that you  
24 worked for Boxer Property Management Corporation that you  
02:24:06 25 took any after-hour call; is that correct?

1 **A.** I'm not sure I understand that question.

2 **Q.** While you worked for Boxer Property Management  
3 Corporation and you say that you were working there and  
4 one of the activities that you said was work for which you  
5 were asking to be paid was answering the Boxer Property  
6 phone, correct?

02:24:21

7 **A.** That's correct.

8 **Q.** You have no records showing how often or frequently  
9 you had to answer that phone?

02:24:34

10 **A.** I personally do not; that is correct.

11 **Q.** All right. And you have no recollection because, as  
12 you told me in your deposition, it would be speculation,  
13 correct?

14 **A.** That is correct.

02:24:47

15 **Q.** Now, talking about the Craigslist items, you said that  
16 100 per month were required, correct?

17 **A.** A minimum of 100 per month, correct.

18 **Q.** A minimum that's what is expected by management,  
19 right?

02:25:02

20 **A.** That is correct.

21 **Q.** Anything over and above that was you trying to do  
22 marketing activities in the form of Craigslist that would  
23 get you a bonus, right?

24 **A.** No. They pushed us to get more. They pushed us to  
25 get more.

02:25:15

1 Q. You said the minimum was 100?

2 A. Correct.

3 Q. So if you did 100, you were fine?

4 A. If you did 100, you would definitely be frowned upon.

02:25:25 5 Q. Wasn't that the minimum you had to do?

6 A. That was the minimum. You would have been frowned on  
7 if you did 100 per month.

8 Q. All right. Nobody gave you a directive to go home and  
9 do Craigslist?

02:25:37 10 A. I can't say that they said, Sherry, go home tonight  
11 and do Craigslist; but in order to meet the requirements  
12 and to produce the productivity, because it was a  
13 marketing activity that draws business to the building.  
14 So in order to do our job --

02:25:53 15 Q. Let's talk a little bit about Craigslist then.

16 A. Okay.

17 Q. You would agree that an employer, a property  
18 management company, they wouldn't want you engaged in an  
19 activity that's not actually going to be helpful to sales,  
02:26:06 20 right?

21 MS. WILLS: I'm going to object, Your Honor.  
22 This is vague and ambiguous.

23 THE COURT: Yeah. Why don't you rephrase that.

24 MS. VALDERRAMA: All right. Sure.

02:26:15 25 BY MS. VALDERRAMA:

1 Q. Ms. Shelby, you indicated that you were doing  
2 Craigslist from home, which would be sometime after 8:30  
3 in the evening. So it would be, like, 8:30 till 10:30 at  
4 night?

02:26:28 5 A. Possibly.

6 Q. All right. Did you attend meetings where you were  
7 instructed that the Craigslist tool was useful to the  
8 extent that it kept, during the day, the Boxer Properties  
9 in front of those people who might be coming in to  
10 potentially lease?

02:26:46 11 A. Would you say that again?

12 Q. Did you receive instructions that the proper way to  
13 enter Craigslist was during the day, not all in one bunch,  
14 spread out morning and afternoon so that those people on  
15 Craigslist who would be interested in finding a property  
16 would have during the workday the opportunity to see what  
17 you had posted?

18 A. We would post throughout the day as well as in the  
19 evening. So it wasn't that -- yeah, they didn't want you  
20 to just sit down and post all of your ads all at one time.  
21 For instance, they didn't want an agent to sit down in one  
22 day and post 500 ads and not post anything else throughout  
23 the month.

02:27:17 24 Q. Ms. Shelby, the way that Craigslist works is when you  
02:27:32 25 posted it, it is sort of at the top and then it sort of

1 gets covered up by other ads and then it's not fresh.

2 **A.** That's right.

3 **Q.** So it's not there in front of the viewing public,  
4 correct?

02:27:41 5 **A.** Well, it's there. Yes, they can see it.

6 **Q.** Well, they have to look for it. It's not the first  
7 thing that shows up on Craigslist, right?

8 **A.** Well, that's typically what people do. When they do a  
9 search, they pull it up. They are going to search, you

02:27:55 10 know, what ads are there. They are not going to look at  
11 the first ad and only look at that ad. They are going to  
12 look.

13 **Q.** Ms. Shelby, I don't -- I didn't ask you how people  
14 look at it. I asked you how, on Craigslist when you post  
02:28:08 15 something, it sits on that platform and you agreed  
16 initially that the most recent posts are at the top of the  
17 platform, correct?

18 **A.** That is correct, yes.

19 **Q.** All right. And you were instructed by Boxer Property  
02:28:20 20 that the way to post to Craigslist is to post them a  
21 little bit each day, in the morning and in the afternoon,  
22 during the workday so that they would constantly refresh  
23 so that people who are interested in leasing a Boxer  
24 Property could see when they looked on Craigslist the  
02:28:40 25 Boxer Property locations that were available, correct?



1 **A.** I don't believe I said that. So I'm confused by that  
2 comment.

3 Yes. They did want us to space out the ads. But  
4 there are business owners that don't look at things like  
5 that during the day because they don't have time. So that  
6 would be applicable going into the evenings because lots  
7 of times that's when a business owner has the quiet time  
8 to actually sit down and take a look and start reviewing  
9 and shopping for a new office because they are so busy  
10 during the day.

11 And that's not all. Everybody is different. Some  
12 business owners have that time during the day or have that  
13 flexibility. But many times, even on weekends, that's  
14 when the business owners would stop and take a look.

15 So it's not just that a business owner is only looking  
16 during the day. It's important to have those new ads at  
17 the top where people can see them, as you say, because  
18 they did want us to do that to have them frequently  
19 posted. So they didn't want you to do them all at one  
20 time for the entire month. But it's also important that  
21 you had that in the evenings as well so that those folks  
22 that were signing on in the evenings could take a look as  
23 well.

24 **Q.** All right. The instructions though, not your view as  
25 to what is best, the instructions from Boxer Property were

1 to put them in in the morning and the afternoon during the  
2 day, correct?

3 **A.** I can't say that we had specific instructions. I can  
4 say that maybe that is what we did and maybe we tried to,  
02:30:04 5 like I said, spread it out. But I can't say that that was  
6 a specific instruction. They knew that we were doing  
7 Craigslist ads in the evenings, and it was a common thing  
8 that was discussed in the meetings.

9 **Q.** At the time that they instructed you to do them during  
02:30:19 10 the morning and the afternoon was to spread them out,  
11 correct?

12 **A.** I can't say that they instructed it, you know, so I'm  
13 not sure what exactly you are implying by that or what you  
14 want me -- what answer you are looking for, what you want  
02:30:31 15 me to say. I'm telling you that we posted them.

16 Sometimes I would post them at 10:00. I might post them  
17 at 2:00. I might post them at 4:00 and then again go home  
18 and still be posting at 8:00 or 10:00.

19 So it wasn't just that they wanted us to only post  
02:30:45 20 during the day. They wanted us to continue posting. It  
21 was important that those evening folks that were looking,  
22 just as those daytime folks, for that reasoning of what  
23 you just said, because if the ad is up here, maybe they  
24 will see it first. It was important for evening people to  
02:31:03 25 see them as well.

1 So that's why we did them. That's why we did them in  
2 the evenings, also. It wasn't something that we just did  
3 at one time.

4 As I mentioned, as you post, you can only post so many  
5 because it times you out if you post too quickly. So we  
6 would try to post periodically at different times.

7 **Q.** The process for Craigslist, you said you don't have  
8 any records showing that you posted to Craigslist in the  
9 afternoon -- I'm sorry, in the after-hours and in the  
10 evening; is that correct?

11 **A.** I don't have anything to show.

12 **Q.** All right.

13 **A.** I don't have access to it.

14 **Q.** Now, when you post to Craigslist, what happens? How  
15 do you know that your post has been successful?

16 **A.** Well, you can just -- I think what I did at the time  
17 was I would just go back, and it would show that it was --  
18 it was on line. You know, it would show active. So you  
19 could go in, and you could pull it up, your posted ads,  
20 and it would show you what was active and what was  
21 expired.

22 **Q.** All right. But at the time that you actually  
23 successfully posted, you also would receive an e-mail from  
24 the account that would be shot back to Boxer Property  
25 saying, "Congratulations. Your post went through" or

1 words to that effect, correct?

2 **A.** I don't believe that my Craigslist ad was -- at that  
3 time was set up on a Boxer Property e-mail. I'm not sure  
4 of that.

02:32:28

5 **Q.** Why would your Boxer Property Craigslist ads not be on  
6 a Boxer Property e-mail?

02:32:46

7 **A.** Well, initially, when I started working at Boxer  
8 Property, the Craigslist wasn't a big -- it wasn't a big  
9 proponent in the marketing. It was something that they  
10 were just starting to experiment with, and it wasn't  
11 required. So, initially, I personally set up my own  
12 Craigslist at my own Craigslist account.

02:33:03

13 Whereas, some of the other employees, after they  
14 started marketing, started handling that and that was part  
15 of, kind of, their second setup package. They would set  
16 their Craigslist account. They would get them set up on  
17 ADP and do all those initial things you would do when  
18 someone was hired. So I can't say that. I believe  
19 initially it was set up on a different e-mail account. It  
20 wasn't set up on the Boxer account.

02:33:18

21 **Q.** All right. So that e-mail account would have been  
22 your personal e-mail account, correct?

23 **A.** It would have been an e-mail account, yeah; but I  
24 don't -- I don't recall what I would have set it up under.

02:33:28

25 **Q.** But it would have been your personal e-mail account?

1 **A.** Yes. Yes.

2 **Q.** So if you, from 8:00 till 10:30 every night, had  
3 posted to Craigslist, there would have been a receipt sent  
4 to your personal e-mail account, correct?

02:33:43

5 **A.** That's possible. I don't recall.

6 **Q.** Well, you said you set it up with your own e-mail  
7 account, correct?

8 **A.** Yes. Yes.

02:33:52

9 **Q.** If the receipt went out, it would have gone back to  
10 the e-mail that you set up your own personal account with,  
11 correct?

12 **A.** I don't know that it would have. I don't recall that.  
13 I don't know. I don't remember that. You are asking me  
14 to answer something that I don't remember, and I'm not  
15 going to lie to you and tell you that I do.

02:34:02

16 MS. VALDERRAMA: (addressing Ms. Galindo) Could  
17 we take a look at Exhibit 7, please.

18 BY MS. VALDERRAMA:

02:34:17

19 **Q.** All right. This is 7-1. It's the first in a group of  
20 e-mails that were attached to the exhibit list. I believe  
21 there are about 1,200 e-mails.

22 Can you identify for the Court what that e-mail is,  
23 Ms. Shelby?

24 **A.** That one is Sherry.Shelby@BoxerProperty.com.

02:34:35

25 **Q.** What is it?

1 A. I'm sorry?

2 Q. What is that e-mail?

3 A. Oh, it looks like it comes from Craigslist.

4 Q. It's a receipt of a posting of a Craigslist by you,  
5 correct?

02:34:43

6 A. Yes. And I don't remember seeing that. I honestly  
7 don't remember that.

8 Q. All right. And this one happens to be posted at  
9 3:51:04 p.m. correct?

02:34:53

10 A. That's correct.

11 Q. You know all the e-mails were produced during this  
12 litigation --

13 MS. WILLS: I'm going to object, Your Honor.

14 THE WITNESS: I have not seen it.

02:34:58

15 MS. WILLS: I'm going to object, first of all,  
16 that that assumes facts not in evidence, and we would  
17 disagree with that. We don't believe that all the e-mails  
18 were produced to us. We would take issue with that  
19 representation.

02:35:10

20 MS. VALDERRAMA: I'm sorry, Your Honor. This is  
21 my cross-examination. For her to say that the answer to a  
22 question about whether e-mail were received is that for  
23 the first time ever she is saying Boxer Property didn't  
24 produce it, that's offensive.

02:35:24

25 MS. WILLS: Well, Your Honor, I believe that my

objection was that the question assumes facts that are not in evidence. Counsel made the statement that all of these e-mails were produced in this case. That's assuming facts not in evidence.

02:35:38 THE COURT: I don't think this witness --

MS. WILLS: We take issue with it.

THE COURT: I don't think this witness knows what was produced in discovery. The witnesses seldom do. Let's ask another question.

02:35:47 BY MS. VALDERRAMA:

Q. Would you agree that Sherry.Shelby@BoxerProperty.com is your e-mail?

A. It was a Boxer Property e-mail.

02:36:01 Q. A Boxer Property e-mail. Would you agree that at least as of June 30, 2015, your receipts for postings at Craigslist were coming back to that particular e-mail at Boxer Property?

A. Yes. It looks like at that time it was.

02:36:14 Q. Have you done any analysis or review of those e-mails to determine whether there are any receipts that came out during the time frame that you are talking about where you have testified to the Court that you sat at home and posted between 8:00 and 10:00 in the evening?

A. No. I have not done an analysis.

02:36:28 Q. Are you aware of any e-mails showing that you posted

1 from home between 8:00 and 10:00 in the evening?

2 **A.** I have not seen these e-mails.

3 **Q.** Have you seen any e-mail from Craigslist --

4 **A.** No, ma'am.

02:36:38

5 **Q.** -- being returned to your BoxerProperty.com box that  
6 says that you posted at any time after 8:00 in the  
7 evening, as you are testifying in court today that you  
8 did?

9 **A.** I don't recall ever seeing an e-mail from Craigslist.

02:36:55

10 So I would have to answer no to that question.

11 **Q.** All right.

12 **A.** I'm wondering if it could have been going to spam or  
13 something. I don't know.

14 **Q.** Now, when your lawyer was talking to you about the  
15 kind of things that you do as a leasing agent, one of the  
16 things that was talked about was how you have brochures  
17 that you try to have available; is that correct?

02:37:16

18 **A.** That is correct.

19 **Q.** All right. And I just want to make sure I understand  
20 what the use of the term "brochure" was because your -- I  
21 thought on the one hand your lawyer was referring to the  
22 slick, colored, Boxer Property handouts that you put into  
23 a folder; but I thought I heard you testify that when you  
24 were talking about a brochure for the prospect you meant  
25 the folder and the things you put in it?

02:37:29

02:37:50



1 A. No.

2 Q. What is a brochure?

3 A. Okay. So you could -- you could consider two  
4 different things a brochure. The what you are calling  
02:38:02 5 slick, maybe seeming like a flyer, that could be a  
6 brochure. I would refer to that. Wait a minute. Let me  
7 finish. That could be a brochure.

8 But also, Boxer did have tri-fold brochures about how  
9 to lease office space and things like that. So sometimes  
02:38:19 10 we would also stick those in the folder.

11 So the actual folder itself would not have been  
12 referred to as the brochure. It would have been the  
13 leasing folder, and then we would have put brochures  
14 inside of it.

02:38:34 15 Q. You don't --

16 A. Both of those things could have been considered a  
17 brochure.

18 Q. Now, you didn't actually prepare the brochures, did  
19 you?

02:38:41 20 A. No, we did not. The marketing department --

21 Q. That was --

22 A. -- did them from --

23 Q. That was Boxer corporate office. They were the ones  
24 who put together those color slick brochures; is that  
02:38:53 25 correct?

1 A. That's correct.

2 Q. In fact, you didn't have a color printer in your  
3 office?

02:38:59

4 A. I think we did have a color printer, but we didn't  
5 print them in the office.

6 Q. So you didn't create them there. You just stuck them  
7 in the folder?

8 A. That is correct.

02:39:08

9 Q. How much time did you say it took you during the day  
10 to stick those ten items into the folder?

11 A. Into one folder?

12 Q. Isn't that what you said you did?

13 A. What do you mean, "did I say I did"?

02:39:23

14 Q. You said you put together a brochure for prospects,  
15 correct?

16 A. We put together folders for the prospects with  
17 brochures in them.

02:39:32

18 Q. All right. And the amount of time that you said --  
19 you had to have ten of those folders available, I believe  
20 is what you testified; is that correct?

21 A. Yes. At all times, yes.

22 Q. You said this was a big part of your time during the  
23 day?

02:39:42

24 A. Well, I don't recall saying it was a big part of my  
25 time. I recall saying that it was a part of our job

1 duties.

2 **Q.** Okay. But you explained to the Court that that was  
3 one of the things that kept you very busy during the day?

4 **A.** That's one of the things that we do. I don't think  
5 that I said that's one of the things that kept me very  
6 busy. I think that you are implying things.

7 **Q.** All right. So with respect to the folder, is this the  
8 -- what I'm holding, is this the kind of thing you would  
9 put the brochures in and then hand out to the prospect?

10 **A.** That is the folder, correct.

11 **Q.** All right. And so it was -- the time that it took to  
12 put the sample lease and the property description and your  
13 card into that folder, you had to have ten of these,  
14 right?

15 **A.** Uh-huh.

16 **Q.** Yes?

17 **A.** At a minimum, yes.

18 **Q.** Okay. A minimum?

19 **A.** A minimum of ten.

20 **Q.** A minimum of 10. So anything you did above the ten  
21 minimum would have been extra and did not need to be  
22 complete that day, correct?

23 **A.** That's correct.

24 **Q.** All right. So whatever time it took for you to do  
25 that is the time that was spent each day on that

1 particular task that your lawyer had you describe to the  
2 judge?

3 **A.** Yes. We would print the floor plans, if we were  
4 putting floor plans in it. We would print the leases. We  
5 would take the time to attach the card on the insert there  
6 in the little holes and whatever other documents, the map,  
7 and the brochures, and the building flyers I guess is what  
8 you would call them.

9 **Q.** How much time did you say that took you every day?

10 **A.** We probably spent about 30 minutes every afternoon  
11 working on those.

12 **Q.** Putting together ten of these, putting --

13 **A.** Not necessarily just ten. We were required to have a  
14 minimum of ten. You have got to keep in mind we had a lot  
15 of traffic in the buildings I was in coming in and out.

16 We may have done more or, excuse me, I may have done more.

17 **Q.** All right.

18 **A.** We're talking about I have got to print this stuff. I  
19 have got to fold everything. I have got to attach the  
20 cards. I have got to put everything in. Yeah, about  
21 30 minutes.

22 **Q.** Now, my understanding is you said you are a top  
23 producer for the company?

24 **A.** I was a top producer. Yes, I was.

25 **Q.** And you said that as a top producer, if you had

1 inventory, you made that clear, you might sign between 10  
2 and 20 leases per month, correct?

3 **A.** Yes. And that's including renewals and expansions.

4 **Q.** Okay. So renewals were the leases that were signed  
5 because Boxer Property initiated an e-mail to the tenant  
6 that said, hey, your lease is going to be up in 90 days.  
7 Make sure you go stop by and sign a new lease?

8 **A.** Toward the end of my tenure, Boxer did start sending  
9 the e-mails; but prior to that, we actually would send  
10 them ourselves or we actually did take a notice to the  
11 suite and put it under the door if they weren't there.  
12 Later on, they started trying to streamline it.

13 **Q.** All right. And that would be 10 to 20 per month,  
14 including all of those different kinds of leases, correct?

15 **A.** Correct. On an average, yes.

16 **Q.** All right. And you also said that secret shoppers  
17 would sometimes come by and sort of test you on whether  
18 you were conforming to the standards that Boxer Property  
19 held important, correct?

20 **A.** Yes, ma'am.

21 **Q.** And what would be a good example of how much time you  
22 would spend on a tour and what was required of you on a  
23 tour?

24 **A.** Well, I would say, as far as the timing with -- unless  
25 -- let me rephrase this because they are always in a

1 hurry. That's one way you could kind of know when you  
2 were being shopped because they really weren't that  
3 interested in seeing very many suites.

02:43:18 4 So, typically, if you went on a tour with someone that  
5 was shopping you, it was going to be a much shorter period  
6 of time because a lot of times they would only want to  
7 look at one, maybe two suites, and then get right back and  
8 be done with it.

02:43:32 9 Whereas when you are dealing with an actual real  
10 prospect that wants to actually lease space, they are more  
11 engaged with you, and they really start building that  
12 rapport. They want to get to know you. Sometimes they  
13 will just come back with you, sit in your office, talk  
14 with you more about the company. It was much different.

02:43:45 15 That's why I typically always knew when I was being  
16 shopped because it was really evident that the person  
17 wasn't engaged in leasing an office, and you could tell  
18 that they weren't engaged.

02:43:59 19 **Q.** All right. And so the reason you are telling us that  
20 is because you are trying to explain the secret shopper  
21 video that takes less time than you say you would spend  
22 while you were doing a tour?

23 **A.** Yes.

02:44:15 24 **Q.** All right. Now, I heard you also say you book about  
25 an hour for a tour?

1 **A.** Yes. Typically 30 minutes to an hour, depending on --  
2 sometimes if a tenant just called and said, I just need a  
3 one-room office and I need something today; do you have  
4 something, well, then I probably would schedule a  
5 30-minute appointment because I knew I wasn't going to be  
6 showing in multiple buildings.

7 Or if someone called and said, I need a two-room  
8 office and I knew I only had one two-room office, there  
9 was no reason for me to schedule a whole hour for that  
10 appointment because I only had one office I could show  
11 them.

12 So those things always fluctuated because it really  
13 depended on the availability and the client and what they  
14 were looking for and how quickly they needed something.  
15 There were a lot of things that applied to that.

16 **Q.** I'm sorry. That applied to?

17 **A.** Applied to how long it was going to take and how long  
18 you would need to spend. There were times when  
19 appointments went way over an hour because, especially if  
20 that person decided to actually sign the lease, and you  
21 get people that are Chatty Cathy sometimes and there is a  
22 lot of talk and you are building your rapport.

23 And that was one of the big things with Boxer they  
24 wanted you to do. They wanted you to be extremely  
25 personable and engage with your clients so that they

1 almost felt like they were coming home and they wanted to  
2 be there. That was one of the reasons I did have great  
3 retention is because I did have good rapport with all the  
4 tenants in the building.

02:45:42

5 **Q.** That's part of your differentiation from your peers?  
6 That's what made you the top producer?

02:45:57

7 **A.** Well, I can't say that being personable made me  
8 different. I think everybody that worked for Boxer was  
9 personable. We had some very talented and wonderful  
10 salespeople. So I can't say that that necessarily made me  
11 different.

02:46:11

12 I think that maybe my -- I don't know. Maybe my sales  
13 experience made me different. I don't know. Maybe my  
14 personality made me different. There is a lot of things  
15 that could apply to someone being different. So I can't  
16 say that.

02:46:28

17 **Q.** So one of the things that was -- you said that you do  
18 when you are working for Boxer and that you say is  
19 time-consuming is that you say that you review leases,  
20 correct?

21 **A.** That is correct.

22 **Q.** The reality is Boxer has a rather short lease compared  
23 to the industry, right?

24 **A.** Well, yeah. In some cases, uh-huh.

02:46:39

25 **Q.** Isn't that pretty much the standard that they have



1 developed a shorter lease and that's one of the things  
2 that really, you believe, sets them apart?

3 **A.** Well, this is what they believe sets them apart.  
4 However, if you compare their lease to, like, a standard  
02:46:56 5 Texas Real Estate Commission commercial lease, it's really  
6 not that much different.

7 Because once Boxer adds in all their addendums and  
8 exhibits and all the other stuff, it really comes out to  
9 be more in the range of probably 12 to 20 pages. That's  
02:47:13 10 an estimate because I don't know exactly.

11 But I can tell you that it's not the three to four  
12 pages they like to tell people on the phone and they train  
13 you to tell people on the phone in the training sales  
14 meetings.

02:47:25 15 MS. VALDERRAMA: (addressing Ms. Galindo) Could  
16 we get a look at Exhibit 11. It's the video.

17 THE COURT: What?

18 MS. VALDERRAMA: It's the video. It is the  
19 secret shopper video.

02:47:38 20 BY MS. VALDERRAMA:

21 **Q.** Do you remember being secret shopped?

22 **A.** I was secret shopped numerous times in five and a half  
23 years.

24 **Q.** So this is an example of what you are talking about  
02:47:47 25 when you are talking about the secret shopper and how they

1 would interact with you.

2 **A.** Uh-huh.

3 **Q.** So if we want to see what Sherry Shelby does, this is  
4 an example of what Sherry Shelby does, correct?

02:47:55

5 **A.** Yeah.

6 **Q.** Is there sound on that?

7 (Defendant's Exhibit 11, a video, played.)

8 BY MS. VALDERRAMA:

02:57:52

9 **Q.** All right. So looking at your office, what would you  
10 have to stay late for to have cleaned that office that  
11 would take you two hours?

12 **A.** Well, I knew I had an appointment coming. So I would  
13 have already straightened up my desk. Come the end of the  
14 day, that doesn't mean that I didn't drop those files  
15 underneath my desk and hide them.

02:58:06

16 So come the end of the day, I had to pull all that  
17 stuff back out and stack the files and file them. That  
18 was real common because you weren't supposed to have  
19 anything on your desk. And we knew if we got shopped like  
20 that, if we had anything on our desk, that was going to be  
21 an automatic -- we were going to lose serious points for  
22 that.

02:58:17

23 **Q.** So are you telling the Court you actually had stashed  
24 trash under your desk? That's what really is going on  
25 here?

02:58:28

1 **A.** No. That's not what I'm saying is really going on.  
2 What is really going on is a whole different story. We  
3 could probably elaborate more on that.

4 What I am telling you is that if I had some stuff on  
02:58:38 5 my desk and I had to put it somewhere because I had a --  
6 some prospect coming in, I would have maybe stuck it under  
7 my desk or I would have put it in a drawer or I would have  
8 put it somewhere to get it out of the way because it  
9 wasn't supposed to be there when I had a prospect come  
02:58:53 10 into the office.

11 And I don't think there is anything wrong with putting  
12 something away and bringing it back out.

13 **Q.** All right. And in this instance, this woman surprised  
14 you, correct?

02:59:01 15 **A.** Well, she was early, yes.

16 **Q.** Yeah?

17 **A.** I did have an appointment. The gentleman that was  
18 there was a regional supervisor that had come in to see  
19 the property manager, and she wasn't in the office. So he  
02:59:11 20 had popped back to talk to me about how things were going  
21 here on the property. So that -- he disrupted me in  
22 getting ready for my appointment.

23 **Q.** Okay. But even in that disrupted state, when she came  
24 in, your desk was clean and it met all the Boxer standards  
02:59:27 25 we're talking about, correct?

1 **A.** Yes.

2 **Q.** And you did that all day regularly, because if your  
3 supervisor came in or somebody popped in, you wanted to  
4 make sure that you met the standards throughout the day?

02:59:35

5 **A.** I will tell you in a heartbeat that there were times  
6 that, no, I wasn't meeting the standard on the desk  
7 because I was inundated and covered up with work and I may  
8 have a stack of files and I may reach over and slide the  
9 giant drawers that we had and stick stuff in there if

02:59:52

10 somebody came in and I didn't want them to see it so I  
11 could pull it back out later. Yes, ma'am. That's exactly  
12 what I'm telling you, and I'm sure every other agent  
13 probably had the same experience.

14 **Q.** But not on this day in this video that was a surprise?

03:00:05

15 **A.** What do you mean on this day?

16 **Q.** On this day, we saw you go in. You didn't push  
17 anything off your desk. Everything was clean and  
18 orderly --

19 **A.** Did you see the supervisor that was in there? When I  
20 heard him coming in, if I had anything out, I would have  
21 put it away because he was a supervisor for the company.  
22 So the fact that I had a supervisor in my office already,  
23 my office would have already been prepared.

03:00:16

24 **Q.** So are you saying that unless you have a supervisor  
25 there, you don't obey the Boxer standards?

03:00:30

1 **A.** What I'm saying is that there were times that you  
2 weren't able to not have something on top of your desk.  
3 As you well know, I'm sure your desk don't look like that  
4 desk right there if you went in your office.

03:00:44

5 THE COURT: Okay. Let's look for a place we can  
6 take our afternoon break.

7 MS. VALDERRAMA: We can take a break now, Judge.

8 THE COURT: 15 minutes.

9 (Recess from 3:00 p.m. to 3:20 p.m.)

03:20:59

10 THE COURT: Okay. If you want to retake your  
11 seat.

12 THE WITNESS: Yes, sir.

13 THE COURT: And we'll go ahead and proceed with  
14 cross.

03:21:46

15 BY MS. VALDERRAMA:

16 **Q.** All right. Ms. Shelby, we were looking at a secret  
17 shopper video and looking at how you handle the office.  
18 I'm just going to quickly go back into the secret shopper  
19 video so we can see a little bit of what happens when you  
20 take the individual to the location.

03:22:02

21 (Defendant's Exhibit 11, a video, was played.)

22 BY MS. VALDERRAMA:

23 **Q.** So is this video a perfect example of what you do when  
24 you are doing a tour?

03:25:06

25 **A.** Yes, ma'am.

1 Q. Is this representative of what happens when you are on  
2 a tour?

3 A. On an appointment, yes, ma'am.

03:25:14

4 Q. Right. And the appointment requires that there be  
5 somebody who it is convenient for them to be on that tour  
6 also?

7 A. Repeat?

03:25:22

8 Q. You have to have a prospect? You have to have a  
9 potential client that you are going to be showing on the  
10 tour, correct?

11 A. I don't think I understand your question.

12 Q. When you are showing somebody on a tour, you are  
13 taking a prospect for a lease on the tour, right?

03:25:35

14 A. I'm taking them for a lease on the tour? I still  
15 don't understand your question. I'm sorry.

16 Q. The purpose of the tour -- and you call it the tour,  
17 taking them on a -- going around the potential lease  
18 locations, the suites, to show them what it is that you  
19 are wanting to rent to them, correct?

03:25:50

20 A. I call it an appointment but, yes, that is. I think  
21 we are talking about the same thing.

22 Q. All right. So whether you call it an appointment or a  
23 tour, you have to have somebody who is ready, willing, and  
24 able to go with you, correct?

03:26:04

25 A. Well, yes.

1 Q. All right. And so that means that times for the tours  
2 have to be convenient and workable for the clientele out  
3 there that Boxer is trying to serve, correct?

4 A. Yes.

03:26:16 5 Q. So that means that later in the evening is not a time  
6 when people would typically set up a tour, correct?

7 A. That's not necessarily the case. Business owners are  
8 very busy sometimes. So they vary. Some business owners  
9 may need to come before a typical, you know, office might

03:26:35 10 open and some may ask you to stay after typical office  
11 hours. And when I say typical, I mean the 8:30 to 5:30 of  
12 what is on the front door. And then, therefore, they  
13 request also for some tours on Saturdays.

14 Q. And it was your responsibility to put those tours into  
03:26:55 15 Salesforce, correct?

16 A. That is correct. Well, no. No. Not necessarily. We  
17 had, as you know, the prospect calls come into  
18 coordinating. So if they get you on the phone or they  
19 don't get you on the phone, then they are going to enter  
03:27:08 20 that information in for you, as well as another agent may  
21 very well do that for you as well.

22 Q. All right. But if you are going to go on a tour,  
23 somebody has to have entered it into the system, correct?

24 A. Unless it's a walk-in.

03:27:23 25 Q. All right.

1 **A.** Which happened quite regularly.

2 **Q.** But going back to the list, those that have come in  
3 through the corporate system, those get put onto the list  
4 of tours because somebody else has actually done the work  
5 of taking down the information of who the tour is going to  
6 be for, correct?

7 **A.** Correct. I would say that's accurate.

8 **Q.** Okay. And then it's up to you to put in the tours  
9 that come in to you through your phone, correct?

10 **A.** Yes.

11 **Q.** All right. And then you say there are walk-ins,  
12 correct?

13 **A.** That is correct.

14 **Q.** All right. For those walk-ins, it's your  
15 responsibility, if you want to show that you have had a  
16 tour, to put those tours into Salesforce?

17 **A.** That is correct.

18 **Q.** All right. And you said that you typically did put  
19 them in. That it would be very rare if you didn't. It  
20 would only be if you forgot, correct?

21 **A.** That is correct. It did happen. It did happen that I  
22 forgot. As a matter of fact, I recall specifically a shop  
23 that I forgot to enter the information into the system,  
24 and I actually lost significant points on my shop for  
25 that.



1 Q. So you are paying attention to the points, and you are  
2 paying attention to your performance. So you want to make  
3 sure you put the tours into Salesforce because it's  
4 something that you get merit judged on, correct?

03:28:35 5 A. That's correct.

6 Q. All right.

7 A. We are so busy all the time that there were times that  
8 you would get busy and forget to put something in. Yes,  
9 ma'am. That did happen.

03:28:46 10 Q. All right. And can you tell the Court -- quantify how  
11 often you failed to put into Salesforce those important  
12 tours?

13 A. Surely I wouldn't be able to tell you that after I  
14 have been gone for three years.

03:28:58 15 Q. It would be just pure speculation?

16 A. Yeah. It would be speculation.

17 Q. All right. So we have talked about the Craigslist  
18 postings. We have talked about the leases. And we have  
19 talked about the process of tours. We have talked about  
03:29:20 20 telephone calls.

21 Do you remember how many telephone calls you received  
22 after 5:30?

23 A. I think you asked me that earlier, and I told you I  
24 did not.

03:29:29 25 Q. It would be pure speculation on that as well?

1 A. That's correct.

2 Q. All right. So you can't recall the telephone calls.

3 And the e-mails afterwards, you said that those are all  
4 collected here as exhibits from -- that were presented by  
5 your lawyer?

03:29:41

6 A. I can't say all. I think you said you contributed,  
7 what, how many documents? You must --

8 Q. Well, have you had a chance to review the documents in  
9 the case?

03:29:53

10 A. I have reviewed the e-mails and -- that she has in  
11 these exhibit books.

12 Q. Okay. So let's do this. Let's just go through and  
13 look at a couple of the exhibits that are in the exhibit  
14 books. Before we do that, I want to make sure that we  
15 also understand again how it is that you are reaching the  
16 30-plus hours of overtime per week.

03:30:07

17 Is it my understanding that you work through lunch  
18 every day?

19 A. Yes.

03:30:17

20 Q. And you left --

21 A. That would be typically, yes. That's typically.

22 Q. Okay. So it would not be normal for you to go to  
23 lunch?

24 A. That's correct. It would be a rare situation.

03:30:28

25 Q. Okay. And you would, obviously, be staying until 8:00

1 every night?

2 **A.** Typically and approximately, yes.

3 **Q.** And then going home and spending two hours putting in  
4 the Craigslist information?

03:30:43

5 **A.** No. That's not what I said. What I said was that I  
6 typically spend about another ten hours throughout a  
7 seven-day week working from home, not specifically. I  
8 think I actually went back and clarified that earlier for  
9 you.

03:30:59

10 **Q.** So you would do that on weekends, though? You would  
11 put in Craigslist?

12 **A.** Sometimes, yeah.

13 **Q.** If you had a tour on a weekend you, of course, would  
14 log that, correct, because you wouldn't be hurried?

03:31:08

15 **A.** If I didn't forget to put it in.

16 **Q.** Are you testifying you would forget to put a tour in  
17 on the weekend?

18 **A.** That could happen. Yeah, that could happen.

19 **Q.** I'm asking you. Did you forget to put in a tour on  
20 the weekend?

03:31:17

21 **A.** I'm telling you that could happen.

22 **Q.** Do you recall tours that you forgot to put in on the  
23 weekend?

24 **A.** Yeah, I do.

03:31:24

25 **Q.** And so if you can recall now, four years after the

1 fact, that you forgot to put them in, why didn't you put  
2 them in at the time?

3 **A.** What do you mean?

4 **Q.** Why didn't you log the tours that you said you did on  
5 a Saturday? Why didn't you log them into Salesforce?

6 **A.** Well, like I said, maybe I forgot to put it in the  
7 system. So if it wasn't a productive tour, that would  
8 have been more likely. The person wasn't interested and,  
9 you know, I was ready to get out of there. It was a  
10 Saturday and, you know, I didn't want to spend 12 hours at  
11 the office on Saturday.

12 **Q.** Let me make sure I understand. So you would have a  
13 tour. You would spend the time doing what we have just  
14 seen you do with a secret shopper. You are testifying you  
15 would have a tour on a Saturday but you would be so  
16 anxious to get out of there, even though you were a high  
17 performer, that you wouldn't log it into the Salesforce  
18 system?

19 **A.** I'm saying it could happen. Yes, ma'am. And it has  
20 happened. So, yes, ma'am. As a matter of fact, you could  
21 probably find that in my shop records.

22 **Q.** Now, to the extent --

23 MS. VALDERRAMA: (addressing Ms. Galindo) Well,  
24 let's look at -- let's go ahead and look at Exhibit 45,  
25 Plaintiffs' Exhibit Number 45. You can take down the

1 video. Thanks.

2 BY MS. VALDERRAMA:

3 Q. All right. And these were the Sherry Shelby  
4 Salesforce tours that your lawyer put in front of you when  
5 you testified about it earlier. Do you recall that?

6 A. I do.

7 Q. And if you --

8 MS. VALDERRAMA: (addressing Ms. Galindo) Can I  
9 see the whole thing on there.

10 BY MS. VALDERRAMA:

11 Q. All right. Do you have it?

12 A. 45?

13 Q. Yes, ma'am. Exhibit 45, Plaintiffs' Exhibit  
14 Number 45.

15 A. Yes.

16 Q. All right. Now, you said the column you filled in is  
17 the fifth column?

18 A. Is there any way you could make it just a little bit  
19 larger?

20 Q. Sure. Sure. We'll make it bigger.

21 A. Thank you.

22 Q. The fifth column is what you filled in, right there  
23 where it says "SS/signed/first EXP appointment"?

24 A. Not necessarily all the time. If someone else is  
25 setting something up for you, then they would have put my

1 initials in there. That doesn't necessarily indicate that  
2 I did that.

3 **Q.** Okay.

03:34:02

4 **A.** What it indicates is it was assigned to me. Say if  
5 another agent were to do this and upload something for me,  
6 he would put "SS/renewal appointment" or "SS/first  
7 appointment" because, if he didn't do that, it wouldn't  
8 pull up under my task for the day.

03:34:17

9 **Q.** All right. So these tasks that are listed here as  
10 things on Exhibit 45, the Sherry Shelby Salesforce tours,  
11 not everything in there is something that you did?

12 **A.** Correct.

13 **Q.** All right. And there are other things that should  
14 have been on there but that you forgot to put on there?

03:34:29

15 **A.** That's happened, yes.

16 **Q.** But we have no way of knowing what those are today,  
17 correct?

18 **A.** Well, we do have at least one shop that would indicate  
19 that that did happen on the shop. So we have some ways.

03:34:40

20 But I don't know that you have all the ways. There is  
21 record of that that Boxer would have.

22 **Q.** You can think of one tour that should be on here  
23 that's not?

03:34:50

24 **A.** And the reason why that would -- the reason why that  
25 would resonate in my mind is because I did lose points on

1 a shop.

2 Now, if I forgot to put something in that it wasn't a  
3 shop, then I probably would have never even realized it  
4 because I would have never been addressed about it. So  
03:35:04 5 that's all I'm telling you.

6 **Q.** All right.

7 **A.** The reason why that one resonates with me is because  
8 it was actually in writing and, you know, my supervisor  
9 said, hey, you didn't do this. So it was brought to my  
03:35:16 10 attention. But if I forgot to do something, that would  
11 mean I would have forgotten it and probably wouldn't have  
12 remembered if it wasn't significant or someone that was an  
13 ongoing person that I would have been working with. So --

14 **Q.** All right. So with respect to the wider field here  
03:35:33 15 that's right next to the one that you said you sometimes  
16 are the one who is responsible for but sometimes it's  
17 somebody else who is actually doing that piece of work,  
18 when would you be the one who fills in the field that the  
19 hand is above right now? It says "null SS-signed."

03:35:52 20 **A.** Yeah. I have no idea what that is.

21 **Q.** All right. If you go down to where it says, "SS  
22 toured 300 and 630. They like 630 the best and want to  
23 move forward with a five-year term," is that a line you  
24 would have input?

03:36:09 25 **A.** Yeah, likely.

1 Q. Okay. So if we see lines like that, we can conclude  
2 that this would have been a tour that you were involved  
3 with and not something that corporate did?

4 A. Not necessarily because someone actually putting that  
5 prospect in the system could have made a note in there.  
6 So it would just depend on what it said. Yes. Sometimes.  
7 Yes. Most likely most of the time it would have been, but  
8 not necessarily all of the time. So it would depend on  
9 what it said.

10 Q. So are you saying the only person that could really  
11 tell whether you made an entry or not by reading this  
12 would be you?

13 A. Well, no. I mean, it would indicate. I mean, I would  
14 know because I would know that maybe it wasn't a note that  
15 I made. For instance, maybe someone that made the  
16 appointment wanted to make a note.

17 Q. Okay. I'm really sorry. I don't mean to interrupt.  
18 But the question is, I'm trying to determine --

19 MS. WILLS: Your Honor, I would object to her  
20 interrupting the witness. She is not letting her complete  
21 her answer.

22 THE COURT: Yeah. We need to let witnesses  
23 answer the question. I think you all may have had a  
24 miscommunication. Try your question one more time.

25 MS. VALDERRAMA: All right. Thank you, Judge.



1 BY MS. VALDERRAMA:

2 Q. I'm trying to understand, Ms. Shelby, how you know  
3 when you look at the list of entries that have "null" at  
4 the top followed by "SS signed" how you determined whether  
5 that was an entry or an activity that Sherry Shelby, the  
6 person sitting here, was actually involved with or whether  
7 it was somebody else's work?

8 A. Well, I would have to read it and see what it was. So  
9 if it said that, you know, I had an appointment, for  
10 instance -- you know, let's look at one of them. First --

11 Q. That's fine.

12 THE COURT: Let her finish. Let her finish.

13 A. For instance, if you looked down at -- let's look down  
14 at the, it looks like, the fifth entry from the top.

15 BY MS. VALDERRAMA:

16 Q. Okay. Thank you.

17 A. It says "first appointment." It says, "SS-toured 300  
18 and 630." Those are suites, 300 and 630. "They liked 630  
19 the best and wanted to move forward with a five-year  
20 term."

21 Well, I can read that and say it looks like I did a  
22 tour with these guys. Maybe someone set up an appointment  
23 for me. Sometimes people would put notes in there about  
24 the appointment or maybe what their expectations were. So  
25 it could be that someone else would put information in

1 there.

2 If, for instance, you scroll down a little further  
3 down, let's see, one, two -- keep going. Keep going. For  
4 instance, when you get down -- keep going a little  
5 further. Keep going a little further. That one right  
6 there where it says, "SS expansion of EXP appointment.  
7 Discuss possible terms and TI." I don't know who did  
8 that. You know, that's just notes in there.

9 **Q.** That activity was not necessarily your activity?

10 **A.** I don't know, you know.

11 **Q.** And it would be speculation to determine whether that  
12 activity was yours or not?

13 **A.** Well, there were other people that worked in the  
14 building. So if I was off on a vacation or if I was out  
15 sick or in the hospital or something like that, there  
16 could have been someone else fulfilling my position. So  
17 that is correct.

18 **Q.** All right. Thank you. All right. So we were talking  
19 about -- we were talking about the tours, though, on this  
20 Exhibit 45. Your lawyer pointed to one at the very  
21 bottom.

22 (addressing Ms. Galindo) Can you roll that down. Of  
23 this first page, I believe, or maybe it's the second page.

24 There was a 6:00. Do you see there that there is a  
25 6:00 entry?

1 A. Uh-huh.

2 Q. You are confident that that 6:00 entry was yours?

3 A. Yes. Because I remember Quinton. That's such an  
4 unusual name. I only had one client named Quinton. And I  
03:39:56 5 can specifically tell you I remember even the kind of  
6 business he had and stuff. So I recall him. He was quite  
7 a character.

8 Q. All right. And in this instance you put in a tour  
9 that was after hours?

03:40:12 10 A. That is correct.

11 Q. All right. All right. So I wanted to -- we have  
12 talked about the tours, which this record 45 would capture  
13 to the extent that you described it. We talked about the  
14 leases. We have seen how you do a tour. We have seen the  
03:40:30 15 folder that you have to keep at least ten of in your  
16 office. And we have seen the cleanliness that's required  
17 that you talked about for the Boxer standards. We have  
18 also seen the receipts from the Craigslist.

19 Was there anything else you said you do during a  
03:40:48 20 regular day that would fill up those 14 hours?

21 A. Well --

22 MS. WILLS: I'm going to object, Your Honor.  
23 This is cumulative. I believe the witness has covered all  
24 this. It's been asked and answered. I don't understand  
03:40:59 25 why we are -- we spent all morning going through all the

1 stuff she did. If there is a specific question that  
2 counsel wants to ask her about something she testified  
3 about. Now she is being, like, oh, let's go over  
4 everything you did all over again.

03:41:13 5 MS. VALDERRAMA: I didn't ask that, Judge. I  
6 asked her to tell me, after we have gone through five  
7 different things, if there is anything else that I have  
8 missed. I think I'm entitled to do that as the defendant  
9 when we are trying to figure out what the claim is as to  
03:41:27 10 what was done.

11 THE COURT: Let's get an answer to that, and then  
12 let's move on.

13 **A.** Okay. Do you want to repeat your question?

14 BY MS. VALDERRAMA:

03:41:35 15 **Q.** Is there anything else that you can recall that you  
16 spent your days doing, other than the things that we have  
17 discussed, which included the tours, the Craigslist, the  
18 leasing documentation, the telephone calls, and then  
19 potentially some e-mail?

03:41:53 20 **A.** Okay.

21 MS. WILLS: I'm going to object, Your Honor, to  
22 the extent are we saying in addition to the things she  
23 testified about all day or just what counsel asked her  
24 about right now. I'm a bit confused. Are we talking  
03:42:05 25 about all day? That was my initial objection to the

1 extent that it's been asked and answered.

2 MS. VALDERRAMA: This is cross-examination. I'm  
3 trying to figure out what she is claiming she did, and I  
4 think we are entitled to have it in one place so we can  
5 make sure we have --

6 THE COURT: Are you trying to get the components  
7 of her day? Is that what you are trying to do?

8 MS. VALDERRAMA: Yeah. I'm trying to get the  
9 components of the day that she did during this extended  
10 time frame for the company.

11 THE COURT: I think we already have had a lot of  
12 testimony on that.

13 MS. VALDERRAMA: All right.

14 BY MS. VALDERRAMA:

15 **Q.** Let's talk then about you said you have these e-mails  
16 that were collected. One of the things I think you  
17 testified was that you -- it was very important if you  
18 were at work that you respond to e-mails, correct?

19 **A.** Yes.

20 **Q.** And the importance was that your supervisor didn't let  
21 you fail to respond to e-mails because that would look  
22 like you weren't doing your job. Is that what was going  
23 on?

24 **A.** I'm not really sure what you are saying.

25 **Q.** All right. What was -- what was your obligation in

1 connection with responding to e-mail?

2 **A.** Doing my job.

3 **Q.** But what was your responsibility in terms of timing?

4 I think you told -- you testified to your lawyer that the

03:43:16

5 Boxer way was so difficult because you had to immediately

6 respond to e-mails from, for example, your supervisor?

7 **A.** Well, as soon as possible, absolutely.

8 **Q.** All right. And certainly before the end of the day?

9 **A.** If possible. I mean, you know, stay late, try to

03:43:34

10 complete my e-mails. I can't say that just because I

11 stayed late I was able to complete my e-mails. You were

12 never, ever complete with your work. I mean, you tried to

13 do as much of it as you could, but we worked so hard. You

14 have no idea the constant interruptions throughout the

03:43:52

15 day.

16 You want to talk about, you know, what we did all day

17 long. Let me tell you something. There were days that I

18 couldn't even go to the bathroom, and that's the truth.

19 So if you want to know, I can sit here and I could keep

03:44:04

20 going more and more and more and more because, if you saw,

21 that interruption -- how many times did I get interrupted?

22 I was trying to tour my client. How many times did I get

23 interrupted during that tour? How many times? Several

24 times. That was constant throughout the day.

03:44:21

25 So not only were you dealing with your work, but you

1 also had to deal with tenants that would come into the  
2 office. Because if a property manager wasn't there, we  
3 would try to help them the best we could. We couldn't do  
4 the property management job, but we couldn't turn our back  
5 to that tenant and just say, "I'm sorry. She is just not  
6 here" because that's not good customer service and that's  
7 not the image that Boxer wanted to project.

8 In order to retain your clients, every single one of  
9 them that walks through that door has to feel like they  
10 are important, and that's a fact. So if you are thinking  
11 that during the day we had lull time and we didn't have  
12 anything to do, that never happened. We worked hard, and  
13 we worked long hours every day.

14 **Q.** All right. If you would, would you take a look at  
15 Plaintiffs' Exhibit Number 80.

16 All right. That looks like it is an e-mail at the end  
17 of the day -- actually, it's the beginning of the  
18 following day. It's 8:09:19 a.m. Do you see that?

19 **A.** Actually, I see -- can you scroll down some more?

20 Okay. It looks like I received an e-mail at 8:19 p.m.,  
21 and then Jerry e-mailed me -- or Jerry e-mailed me at  
22 8:18. Is that Tuesday?

23 **Q.** Ms. Shelby, if you look at that --

24 **A.** 6:43 p.m. and 8:18 p.m. It's hard to see.

25 MS. WILLS: Your Honor, she is not giving the

1 witness an opportunity to even read the e-mail. I would  
2 request that the witness be allowed to see the full  
3 e-mail.

4 THE COURT: Go ahead and finish your answer.

03:46:04

5 **A.** Can you ask the question again, please?

6 BY MS. VALDERRAMA:

7 **Q.** Could you take a look at Exhibit Number 80, please?

8 **A.** Yes, ma'am.

03:46:13

9 MS. WILLS: I would tell the witness Exhibit 80  
10 is in your notebooks, since you are not being shown the  
11 whole thing on the screen, and none of us are getting to  
12 see the whole thing.

13 **A.** Yes. Okay. Let's see. It looks like it starts from  
14 January 25th.

03:46:41

15 BY MS. VALDERRAMA:

16 **Q.** When you are finished reading it, just let me know.

17 **A.** Okay. 26, 27. Okay. It appears as though Kristine  
18 Dinh --

03:47:00

19 **Q.** I don't need you to go through the e-mail. I need you  
20 to read it. When you finish reading it, please let me  
21 know.

22 **A.** Okay. Your question?

23 **Q.** All right. If you go to the middle of the page where  
24 it says from Jerry Watson, it is sent Tuesday, January 26

03:47:19

25 at 6:43 p.m. It's to you. Do you see that?



1 **A.** That's correct.

2 **Q.** All right. And he says, "Hi, Sherry" and he gives you  
3 some information about a report, correct?

4 **A.** That's correct.

03:47:30

5 **Q.** All right. The response to that or the reply to that  
6 comes from you the following morning at 1-27 -- on 1-27,  
7 correct?

8 **A.** Yes.

03:47:42

9 **Q.** So you did not reply to him after he sent it to you at  
10 6:43 p.m.?

11 **A.** No. It wasn't an urgent situation. So I did not  
12 reply.

03:47:54

13 **Q.** Okay. So although you testified that you always had  
14 to respond to e-mail the same evening, that's not  
15 necessarily accurate?

16 **A.** I don't think that's what I testified, actually. I  
17 didn't say I always had to reply the same evening. That's  
18 not what I said.

03:48:14

19 **Q.** All right. Let's go to Plaintiffs' Exhibit Number 84.  
20 Do you see that?

21 **A.** Which one is this?

22 **Q.** Exhibit Number 84.

23 **A.** Okay. The question?

03:48:53

24 **Q.** All right. That appears to be an e-mail communication  
25 between you and someone named Charlotte McLean, who runs

1 an insurance agency, right?

2 **A.** Yes. She is a tenant.

3 **Q.** Okay. And she doesn't do business with Boxer, right?

4 **A.** Yes, she does.

03:49:04 5 **Q.** She is a tenant. She doesn't provide our insurance,  
6 correct?

7 **A.** I don't know that she does or not. I don't know who  
8 does Boxer's insurance.

9 **Q.** If you go to the bottom of the page, there is an  
03:49:15 10 e-mail from you to her at 11:45 a.m. Do you see that?

11 **A.** Yes, I do.

12 **Q.** And it says, "re business cards"?

13 **A.** Yes.

14 **Q.** Actually, that's from her to you. Below that is one  
03:49:28 15 from you to her on January 29 at 11:35 a.m. Do you see  
16 that?

17 **A.** That is correct.

18 **Q.** You say, "Good morning, Charlotte. I'm about to head  
19 to lunch, but I need some of your cards," correct?

03:49:39 20 **A.** Yes, I do.

21 **Q.** So that was a day when you were heading to lunch?

22 **A.** Yeah. I probably went and picked something up at  
23 McDonald's or Jimmy John's or somewhere like that.

24 **Q.** All right. And then if you'll turn to Plaintiffs'  
03:49:52 25 Exhibit Number 92. Let me know when you have had a chance

1 to read it.

2 **A.** Uh-huh. I have read it.

3 **Q.** That's an e-mail from you to Jerry Watson, your  
4 supervisor, correct?

03:50:17 5 **A.** That's correct.

6 **Q.** And you are notifying him at 6:50:51 p.m. that you  
7 stayed late, correct?

8 **A.** Correct.

9 **Q.** All right. And so you are telling him you stayed late  
03:50:27 10 because you are trying to make up some of tomorrow's time,  
11 correct?

12 **A.** Yes.

13 **Q.** All right. If you'll turn to Plaintiffs' Exhibit  
14 Number 95. Let me know when you have had a chance to  
03:50:59 15 finish reading it. I see you are going to another  
16 exhibit. Are you finished reading the one we're working  
17 on?

18 **A.** I thought it was the same thing.

19 **Q.** It is Exhibit 95. Have you finished reading it?

03:51:22 20 **A.** Does it have a number on it? Okay. This is 93 at the  
21 bottom. I'm confused. There are two documents under  
22 Exhibit 95. So I'm not sure which one you want me to look  
23 at.

24 **Q.** All right. This is your -- if you look at the one  
03:51:43 25 that's from Travis Lemley -- to Travis Lemley from Travis

1 Lemley at 5:27:35 p.m. Do you see that one?

2 **A.** 5:27, yes.

3 **Q.** It says "conversation with Travis Lemley"?

4 **A.** Yes.

03:51:58 5 **Q.** All right. Have you had a chance to read that?

6 **A.** I see that.

7 **Q.** Again, this is Plaintiffs' Exhibit Number 95. That  
8 e-mail, is it -- or it captures a Lync conversation,  
9 correct?

03:52:27 10 **A.** Yes.

11 **Q.** That's what you were talking about was the sort of  
12 instant messenger program?

13 **A.** Yes.

14 **Q.** All right. That particular e-mail that is in here,  
03:52:38 15 5:27:35 p.m. is before the close of business, correct?

16 **A.** Yes.

17 **Q.** All right. And down below do you see where it says  
18 Sherry Shelby and there is a time next to it?

19 **A.** Yes.

03:52:48 20 **Q.** That's at 5:26 p.m.?

21 **A.** Yes.

22 **Q.** You are responding to Mr. Lemley and you are saying,  
23 "Oh, yeah. K. See you tomorrow. I'm out for the day,"  
24 correct?

03:52:58 25 **A.** Yes.

1 Q. All right. And that's at 5:26 p.m.?

2 A. That doesn't mean that -- if you are implying that I  
3 left, that doesn't mean that I left the building.

4 Q. That's what the document says, right?

03:53:10

5 A. What that says is I'm out for the day. That means I'm  
6 not going to help him with anything else today. So maybe  
7 I have got my own stuff to do in the office and I can't  
8 help him today.

03:53:25

9 Q. All right. If you'll take a look at Exhibit  
10 Number 99. This is Plaintiffs' Exhibit Number 99. It has  
11 two sides to it.

12 A. I was trying to figure out -- okay.

03:54:38

13 Q. All right. If you look at the bottom of the page  
14 that's Bates labeled BPMC-027104, do you see that  
15 Mr. Lemley has a 4:42 p.m. message to you?

16 A. Where? At the --

17 Q. Exhibit 99, Plaintiffs' Exhibit Number 99, it has  
18 multiple pages. If you look on the screen, you can see  
19 which page we're looking at.

03:54:58

20 A. Are you talking about where it says I had to step in  
21 the break room for a quick bite because I had no lunch  
22 today until a few minutes ago and was seeing stars?

23 Q. Right. Mr. Lemley says -- at 4:42 p.m. he says he was  
24 not able to have lunch that day, correct?

03:55:12

25 A. That's what he said, yes.

1 Q. And your response is on the following page, "LOL. I  
2 totally understand. Have been there a few times."

3 A. Uh-huh.

4 Q. Is that your response?

03:55:23 5 A. Yeah.

6 Q. All right. If you will turn to Plaintiffs' Exhibit  
7 Number 105. This is another one of the Lync  
8 conversations, but it's between you and someone named  
9 Hemang Kareliya?

03:55:54 10 A. Yes. I see it.

11 Q. Let me know when you have finished reading it.

12 A. I'm reading it. Okay.

13 Q. Do you see in the middle of the page Hemang Kareliya  
14 is trying to do something to your system remotely,  
03:56:18 15 correct?

16 A. Yes. And we had had some issues with that. He had  
17 tried several times for several hours and was not able to  
18 complete it.

19 Q. If you go to the middle of the page where it says  
03:56:25 20 Sherry Shelly, 4:56 p.m., correct?

21 A. Yes.

22 Q. You say, "I will be here until 5:30, but I'm working  
23 on something important."

24 A. Yes.

03:56:33 25 Q. So you are telling him that you can't stop what you

1 are doing and you'll be there until 5:30, correct?

2 **A.** Yes.

3 **Q.** Was that accurate? Were you telling the truth?

4 **A.** What do you mean? That I was working on something?

03:56:43 5 **Q.** That you were going to be there until 5:30.

6 **A.** See, I don't know because -- what day was that? That  
7 was back in 2014. So I couldn't tell you. But most  
8 likely, whatever I was working on I could pretty much  
9 guarantee you that I wouldn't have been able to leave at  
03:56:58 10 5:30. If it was something important, it probably would  
11 have taken a while.

12 And I just didn't want to mess with him because he was  
13 trying to sign in to my computer from India, and I had to  
14 work on documents. And after I got done with that, I  
03:57:10 15 wasn't going to sit there and wait for him to do a back-up  
16 on my computer for three hours and just have to sit there  
17 and twiddle my thumbs.

18 **Q.** Okay. Are you -- I'm sorry. I didn't mean to  
19 interrupt.

03:57:18 20 **A.** Go ahead.

21 **Q.** If you go down to the bottom of the page, you see the  
22 last entry from Hemang Kareliya is at 5:34 p.m. Actually,  
23 at 5:34 p.m. you tell him, it's all yours, correct?

24 **A.** Yes.

03:57:33 25 **Q.** He responds, "Okay. I will connect remotely. You can

1 log off your computer," correct?

2 **A.** Yes.

3 **Q.** And you say, Sherry Shelby, 5:35 p.m., "Okay."

4 **A.** I let him get in. That would have given me time to go

03:57:45

5 ahead and do what I needed to do in my office with the

6 paperwork and whatever else.

7 **Q.** All right. Now turn to Plaintiffs' Exhibit

8 Number 106. So that is to Travis John Lemley from Travis

9 John Lemley, and it's a conversation -- it's a Lync

03:58:12

10 conversation with you, and it's closed out at 4:41:08 p.m.

11 Do you see that?

12 **A.** Uh-huh.

13 **Q.** Is that a yes?

14 **A.** Yes, I see it.

03:58:19

15 **Q.** Then we go down and see where Travis John Lemley is

16 saying something about usually leaving at 4:00 and he

17 could check and see.

18 **A.** He is talking about the maintenance man.

19 **Q.** Right. But he goes to you at 4:39 p.m., and you say,

03:58:32

20 "K. I'm leaving sharp today"?

21 **A.** Yeah. I may have had to leave early that day.

22 **Q.** Okay. And also, another one of the plaintiffs'

23 exhibits, this is Plaintiffs' Exhibit Number 120, do you

24 see at the end of that conversation, which is with Kristen

03:59:28

25 Davis, you say to her, "Have a great weekend."



1 She says, "Okay. See you Monday. You, too."

2 You sign off with her and say, "Have a great weekend."

3 **A.** What is your point?

4 **Q.** Is that what you tell her?

03:59:39

5 **A.** Yeah.

6 **Q.** All right. And Kristen Davis is the -- she is the  
7 manager at the same location?

8 **A.** She was, yes.

04:00:03

9 **Q.** All right. All right. If you'll turn to Exhibit  
10 Number 128, Plaintiffs' Exhibit Number 128. Let me know  
11 when you have had a chance to read that.

12 **A.** I have got to go to a new book. Hang on a second.  
13 128?

14 **Q.** Yes, ma'am.

04:00:23

15 **A.** Are you talking about the e-mail at 6:37 p.m.?

16 **Q.** Yes, ma'am. It's at 6:37:23 p.m. from you to Peterson  
17 Homebuilders?

18 **A.** Right.

04:00:51

19 **Q.** In the body of that e-mail you are talking about  
20 checking in with them to see if they are ready to renew  
21 their lease. And it says you'll be going on a two-week  
22 vacation and would like to get everyone's leases taken  
23 care of prior to. Do you see that?

24 **A.** Yes.

04:01:02

25 **Q.** So that means there are at least two weeks where you

1 are not going to be earning overtime, correct?

2 **A.** I would say so. I'm not there.

3 **Q.** All right. If you take a look at Exhibit 129.

04:01:16

4 THE COURT: How much vacation did you take on the  
5 average year?

6 THE WITNESS: I think we got three weeks.

7 THE COURT: And you took it?

04:01:28

8 THE WITNESS: Don't quote me on that, Judge, but,  
9 yes. Well, one year I did give some back. I didn't use  
10 it all. When I left that last year, I didn't -- I left  
11 with pretty much most all of it. I hadn't used it, that  
12 last part, I think maybe two or three days that I was out  
13 sick. But I lost a lot of vacation time.

14 THE COURT: Okay.

04:01:48

15 BY MS. VALDERRAMA:

16 **Q.** Regardless, when you looked at the claim that's being  
17 made from the Court, you didn't deduct for any weeks that  
18 you were out for vacation, did you?

19 **A.** No.

04:01:57

20 **Q.** All right. Let's take a look at Plaintiffs' Exhibit  
21 Number 129. This is a conversation with Lauren Reis or  
22 Rice (phonetic)?

23 **A.** What exhibit? I'm sorry.

04:02:17

24 **Q.** It's Plaintiffs' Exhibit 129. I think you spoke about  
25 it with your attorney already.

1 **A.** Yes.

2 **Q.** All right. And this is the one where Ms. Reis is  
3 telling you that she filled in the time cards, correct?

4 **A.** That is correct.

04:02:29 5 **Q.** And that's at 4:54 p.m. on the Friday that the time  
6 cards are due; is that correct?

7 **A.** That's correct.

8 **Q.** Does that refresh your recollection that you had not  
9 filled them in and that you did not reach out to her until  
10 5:54 p.m. to ask her to fill them in?

11 **A.** I don't see where I asked her to do that. Actually,  
12 unless I'm missing something here, I messaged her to tell  
13 her I was unable to access the system, which was quite a  
14 common problem that I had for some reason with my computer  
04:03:06 15 and ADP. They didn't like each other.

16 **Q.** All right. When you reached out to her, it was at  
17 4:54 p.m. on the Friday when your time records were due?

18 **A.** That's correct.

19 **Q.** All right. And that's the same time that I read to  
04:03:19 20 you as the time that you reached out to her, correct?

21 **A.** I don't know. It actually looks like she maybe  
22 inquired with me because the beginning -- this doesn't  
23 look complete, the one on the left, because it's Sherry  
24 Shelby at 4:54 p.m. I say, "Sorry. I can't get into  
04:03:40 25 ADP."

1 So it seems as though I'm replying to something that  
2 she may have Q'd me, but there is not anything else on  
3 there. So I don't know.

4 **Q.** Have you ever --

04:03:50

5 **A.** That's what it seems like to me, like I'm replying to  
6 her.

7 **Q.** Have you ever failed to put in your time cards  
8 completely?

9 **A.** Yes.

04:04:02

10 **Q.** All right. Would you turn to Exhibit 145. This is  
11 Plaintiffs' Exhibit Number 145.

12 **A.** Yes. I see it.

13 **Q.** All right. And in the middle of that there is a  
14 message from you at 6:41 p.m. where you tell someone named  
15 Lisa Fouche, "I'll be there after lunch to see what I can  
16 do to help out"; is that correct?

04:04:30

17 **A.** Yes.

18 **Q.** All right.

19 **A.** So let me elaborate on that. She is on the other side  
20 of town, and they needed my help over there. And so I was  
21 letting her know that after her lunchtime I would be there  
22 because I was going to drive over there and I would be  
23 there. So I don't know what you are implying there.

04:04:41

24 **Q.** If you'll turn to Exhibit 199. This is actually  
25 Plaintiffs' Exhibit Number 199. Let me know when you have

04:05:02

1 finished with it.

2 **A.** Okay.

3 **Q.** All right. At 4:52:41 p.m., you are sending an e-mail  
4 from yourself to yourself, correct?

04:05:53

5 **A.** No. That's not correct. What is happening here is  
6 that Boxer has an internal system, as I mentioned earlier,  
7 and what is happening here is that I apparently went in  
8 and created -- or someone did. I don't know. It doesn't  
9 -- I can't say that it was me because it says from CME,

04:06:18

10 which is the contact management system that Boxer has  
11 created, their own software, proprietary software.

12 So someone created this case in CME and e-mailed it to  
13 Jerry Watson, Ernest Garza, myself, and a couple of other  
14 people. Anyone that's associated, assigned to that  
15 property in the system when a case gets created for that  
16 building for whatever it is, a maintenance issue, a  
17 leasing issue, automatically gets an e-mail.

04:06:37

18 So, no, I can't say that I sent that e-mail.

19 **Q.** Okay. With respect to that e-mail it was in there --

04:06:53

20 it was selected by the plaintiffs as a plaintiffs'  
21 exhibit. If you'll turn to the next page, Exhibit 199,  
22 it's the very last page of Exhibit 199. That appears to  
23 be a document -- an e-mail sent from you to yourself at  
24 your Boxer Property e-mail, correct?

04:07:13

25 **A.** Did you say the last page? I'm sorry.

1 Q. The last page of Exhibit 199.

2 A. Yes.

3 Q. All right. And what is there, you are sending from  
4 Sherry's iPhone -- that would be your personal iPhone?

04:07:41 5 A. Yes.

6 Q. And you are sending it to your Boxer Property e-mail,  
7 correct?

8 A. That could have been a mistake because both of my  
9 e-mails --

04:07:48 10 Q. If you'll just answer the question. Is that --

11 THE COURT: Let her finish. Let her finish.

12 MS. WILLS: She keeps cutting her off. It's very  
13 rude, actually.

14 THE COURT: Go ahead and finish your answer.

04:07:59 15 A. My personal e-mail is SherryShelby@aol.com. My Boxer  
16 e-mail was Sherry.Shelby@BoxerProperty.com. Sometimes  
17 when I would go to send an e-mail from my phone, it would  
18 auto-populate. This could have very well been an accident  
19 that I was trying to send something.

04:08:16 20 This e-mail is from my daughter, Stephanie Brown. She  
21 was trying to sell her house. She engaged with Elaine  
22 Marak, who is a residential real estate agent in our area;  
23 and Elaine sent her these documents to list her home.

24 She had sent that to me to look at for her. So I was  
04:08:35 25 trying to send that to myself where I could take a look at

1 it for her.

2 So it's very likely that that is an accident because I  
3 would have wanted to be able to see it on a big screen if  
4 she sent it to me on my phone because she was wanting to  
04:08:49 5 sell her house. Since I'm a licensed agent, she asked me  
6 to look at it.

7 BY MS. VALDERRAMA:

8 **Q.** I'm sorry. Was it an accident to -- did you want to  
9 see it on a big screen? So you were trying --

04:08:59 10 **A.** What I'm telling you is --

11 **Q.** Let me finish the question so that I don't interrupt  
12 you again.

13 **A.** Uh-huh.

14 **Q.** You said that you think it was an accident, but you  
04:09:07 15 wanted to see it on a big screen. So are you saying you  
16 wanted to see it on a big screen at Boxer Property or are  
17 you saying you wanted to see it on a big screen somewhere  
18 else that was not your phone and was not Boxer Property?

19 **A.** Well, what I'll say is considering it looks like it  
04:09:22 20 was at 4:52 and, as you noted in some of the other  
21 e-mails, I would e-mail things even from Boxer to my  
22 personal e-mail so that when I got home I could look at  
23 it. So that would have been what I was trying to do here.

24 I would have wanted to send that to my regular e-mail.

04:09:37 25 And it looks like she had sent it to me -- let's see.

1 Elaine Marak. I don't know. I don't know what happened  
2 with that. I don't know. That's what it is. She wanted  
3 me to look at those documents.

04:09:58

4 **Q.** It looks like your daughter Stephanie Brown sent it to  
5 you via her iPhone at 3:58:10 p.m. and that before the end  
6 of the work day you sent it from your e-mail, which would  
7 be aol.com to Sherry.Shelby@BoxerProperty.com, correct?

8 **A.** It looks like that, yeah.

04:10:18

9 **Q.** All right. And that would be before the end of the  
10 workday?

11 **A.** Okay.

12 **Q.** Correct?

13 **A.** Correct.

04:10:25

14 **Q.** And it would be for some kind of personal business,  
15 right?

16 **A.** Yes.

17 **Q.** All right. But this is plaintiffs' exhibit, correct?

18 **A.** That's correct.

04:11:04

19 **Q.** All right. All right. Would you take a look at  
20 Plaintiffs' Exhibit Number 232. Let me know when you have  
21 finished reading it.

22 **A.** Okay.

04:11:54

23 **Q.** All right. So that was an e-mail that was sent from  
24 Sherry Shelby, which looks -- the last time that was your  
25 personal AOL account, to Sherry Shelby at Boxer Property



1 and there is no content. Do you know what the purpose of  
2 that e-mail is, why that would be considered work?

3 **A.** I don't know. Maybe I meant to attach something and I  
4 didn't attach it.

04:12:10

5 **Q.** Well, looking at that, that doesn't seem to serve any  
6 purpose to send a blank e-mail to yourself?

7 **A.** I probably meant to attach a document to it and I just  
8 forgot to attach it. That happens. I have sent e-mails  
9 to tenants and forgot to attach documents.

04:12:25

10 **Q.** That's Plaintiffs' Exhibit Number 232, correct?

11 **A.** Otherwise, there would be no reason to send a blank  
12 e-mail.

13 **Q.** All right. Would you take a look at exhibit --  
14 Plaintiffs' Exhibit Number 285.

04:13:25

15 **A.** Are you wanting me to look at the one that was from  
16 7:20 p.m. or 7:21?

17 **Q.** 7:21 p.m. It's the one that your attorney discussed  
18 with you.

19 **A.** I have the one from 7:30 a.m. It's actually  
20 multiples. They are the same exhibit.

04:13:58

21 **Q.** All right. If you would take a look at the one at  
22 7:21 p.m., 12-4-2015.

23 **A.** Okay.

24 **Q.** All right. You told your lawyer that you sent that  
25 e-mail to yourself because you needed to review the

04:14:20

1 document, correct? You needed to review the lease?

2 **A.** Uh-huh.

3 **Q.** Is that yes?

4 **A.** Yes.

04:14:29 5 **Q.** All right. So when the document was actually sent, it  
6 was sent after all parties had signed the envelope and the  
7 lease. So the lease is finished. There is no review that  
8 you could do that would be contributing to the content of  
9 the lease, correct?

04:14:44 10 **A.** No. Not correct.

11 **Q.** Are you saying you were going to change the terms of  
12 the lease after the tenant signed it?

13 **A.** No. I'm saying for some reason I needed to send it to  
14 myself to review it to make sure that everything was  
04:14:57 15 signed properly and that everything went through. There  
16 was a reason why I would have wanted to review that. It  
17 served no other purpose for me to send it to look at it on  
18 my own e-mail.

19 **Q.** Can you take a look at the last page of that exhibit,  
04:15:12 20 7:22:18 p.m. You are saying, "I'm just now leaving and  
21 didn't take a break. I'm exhausted." You are telling  
22 that to your supervisor Mr. Watson, right?

23 **A.** Yes. That's correct.

24 **Q.** You are telling him this extraordinary thing that has  
04:15:28 25 caused you not to be able to leave until 7:22 p.m. and not

1 to be able to take a break, correct?

2 **A.** No. You are putting words in my mouth.

3 **Q.** Why else?

4 **A.** That's not what I am telling you. I will tell you

04:15:40

5 what I am telling him. He asked me for something

6 apparently. I'm letting him know, okay, that I didn't

7 even get to take one break, meaning I didn't even get a

8 five-minute sandwich to eat that day. So I am letting him

9 know that at that point I am completely exhausted. I am

04:15:57

10 done, and I'm going home.

11 Now, that was at 7:22. That doesn't mean that I

12 walked out the door at 7:22. I just let him know that I'm

13 done. I'm fixing to leave, and I'll address this on

14 Monday. Because apparently whatever it was wasn't

04:16:14

15 something that I wanted to get into on a Friday at almost

16 7:30 p.m.

17 **Q.** All right. And those e-mails that we went through,

18 those were plaintiffs' exhibits that were produced to show

19 the time that you worked after hours, correct?

04:16:31

20 **A.** That is correct.

21 **Q.** All right. And again, I just want to confirm that you

22 didn't go to lunch regularly, right? You didn't get to

23 take lunch, and that's how you get to 14 hours per day,

24 plus four hours on the weekend?

04:16:45

25 **A.** We had a lot of working lunches, yes.

1 Q. All right.

2 A. And there were rare occasions when we did get to go  
3 out to lunch, but it was a rare occasion.

4 Q. Oh. Did you get to go to lunch or not?

04:16:58

5 A. Well, we had working lunches where we ate and worked  
6 in the office and ate. So I guess if you consider that  
7 going to lunch, we had a sandwich or something or a  
8 hamburger and worked. And on a rare occasion, especially  
9 if it was like a Boxer sales lunch or something where they  
10 had our sales meetings, they would feed us lunch at the  
11 sales meeting.

04:17:21

12 MS. VALDERRAMA: May I approach the witness,  
13 Judge?

14 THE COURT: Yes, you may.

04:17:44

15 MS. WILLS: I'm sorry. What exhibit is this?

16 MS. VALDERRAMA: 116.

17 MS. WILLS: One what?

18 MS. VALDERRAMA: 116. It's a new exhibit.

19 MS. WILLS: Is it in the exhibit notebook?

04:17:55

20 MS. VALDERRAMA: No. It's rebuttal.

21 MS. WILLS: Your Honor, this is a document that  
22 was never marked as an exhibit.

23 THE COURT: Are you unfamiliar with it?

24 MS. WILLS: I'm completely unfamiliar with it.

04:18:06

25 It was not included in any of the exhibits that defendant

1 submitted in their four boxes of exhibits for the trial of  
2 this case.

04:18:20 3 MS. VALDERRAMA: Judge, it's not our job to have  
4 to show where the plaintiff is not being truthful. The  
5 plaintiff has said she never got to go to lunch. We are  
6 entitled to wait until she testifies at that point and  
7 then put her credibility at issue with the Court. This is  
8 a rebuttal exhibit. She is either testifying truthfully  
9 about getting to go to lunch or she is not. Truthfulness  
04:18:36 10 is a big piece of this case.

11 MS. WILLS: It is a big piece of this case, and  
12 nothing in this e-mail is any different from anything  
13 else.

04:18:46 14 THE COURT: I don't know what the agreement was  
15 between you. Did you agree to produce all documents,  
16 including impeachment documents?

17 MS. VALDERRAMA: We did not agree to produce  
18 impeachment documents. We did not. We reserved the right  
19 to have rebuttal and impeachment documents.

04:19:00 20 MS. WILLS: We'll withdraw. She can ask her  
21 about this exhibit because it's -- okey-dokey.

22 THE COURT: Okay.

23 BY MS. VALDERRAMA:

04:19:17 24 Q. Would you take a look at Exhibit 116, which is in  
25 front of you?

1 **A.** Yes.

2 **Q.** Is that an e-mail from you to Jerry Watson at  
3 9:04 a.m. on September 10 of 2015?

4 **A.** It is.

04:19:26 5 **Q.** And the heading is "earlier lunch today," correct?

6 **A.** That is correct.

7 **Q.** You tell him that today is grandparents' day at your  
8 grandson's school, and you are going to take lunch today a  
9 little earlier than normal, at 10:45?

04:19:40 10 **A.** By normal I mean in the Boxer management book, the  
11 Boxer bible, it says that lunch hours when taken are  
12 supposed to be between 11:00 and 1:00. And it was -- like  
13 I told you -- I want to correct you. You said that I said  
14 I never went to lunch. I did not say that. I said on  
04:19:57 15 rare occasions I did. And when it involved grandparents  
16 day, I'm a wonderful grandmother and I love my  
17 grandchildren. They are the most important thing to me.  
18 And I did want to participate in my grandson's  
19 grandparents' lunch.

04:20:09 20 **Q.** This basically says it's an earlier lunch. It doesn't  
21 say that you are not taking lunch otherwise?

22 **A.** Earlier than customary for Boxer.

23 **Q.** All right.

24 MS. VALDERRAMA: Approach, Judge?

04:20:53 25 THE COURT: Yes, you may.

Cross Examination of Sherry Shelby Day 1

1 BY MS. VALDERRAMA:

2 Q. Exhibit 118. I have one in the order. All right. On  
3 11-24-2015 at 1:59 p.m. you are telling Jerry, your  
4 manager that you are taking a late lunch. You say, "I'm  
5 just now headed to lunch," correct?

6 A. That's correct.

7 Q. All right.

8 A. That doesn't mean that I didn't go get a sandwich and  
9 come right back and eat it in my office. If we were going  
10 to be out of the office during the normal 11:00 to 1:00,  
11 which is the time period that Boxer allotted for people to  
12 go to lunch, we had to notify the supervisor. So --

13 MS. VALDERRAMA: May I approach, Judge?

14 THE COURT: Yes, you may.

15 MS. VALDERRAMA: Thank you.

16 BY MS. VALDERRAMA:

17 Q. All right. Would you take a look at Exhibit 119?

18 A. I have.

19 Q. All right. That's an e-mail to Jerry Watson, your  
20 supervisor, copying Kimberly Yantz, who is, I assume,  
21 another leasing agent. Is she another leasing agent?

22 A. Yes.

23 Q. It's sent from you at 9:13:26 a.m. In that e-mail you  
24 say, "Jerry, after I get Ann's lease to her, I will be  
25 leaving for an earlier extended lunch to see my

1 granddaughter's Christmas program. Kimberly has agreed to  
2 cover the extra hour while I'm not available. I'll be  
3 unavailable from 10:30 to 12:30." That's Exhibit 119.

4 Is that accurate you took an extended lunch that day?

04:24:24

5 **A.** I did. For my granddaughter's program.

6 MS. VALDERRAMA: May I approach, Judge?

7 THE COURT: Yes, you may.

8 BY MS. VALDERRAMA:

04:25:48

9 **Q.** All right. Exhibit 120, that's an e-mail on  
10 January 18 of 2016 from you to your supervisor Jerry  
11 Watson. Do you see that?

12 **A.** I do.

13 **Q.** And you are telling him again that you are going to  
14 take a late lunch, correct?

04:25:57

15 **A.** That's correct.

16 **Q.** And you say, "Jerry, my PM -- " who would that be?

17 **A.** That would have probably been -- because I would have  
18 been -- that would have been at 1322 Space Park. So that  
19 would have been Kelly Farrell.

04:26:12

20 **Q.** All right. "My PM is out today. I have been dealing  
21 with tenant issues this morning. I'm just now getting to  
22 head to lunch. I'll be back at 1:45 for my 2:00 p.m.  
23 appointment." Do you see that?

24 **A.** I do.

04:26:25

25 **Q.** It shows that you are leaving at 12:42 and will be



1 back at 1:45. That is an hour lunch?

2 **A.** That is correct.

3 MS. VALDERRAMA: May I approach?

4 THE COURT: You may.

04:27:14 5 BY MS. VALDERRAMA:

6 **Q.** Would you take a look at Exhibit 121, which is an  
7 e-mail from you to Jerry Watson, your supervisor, on  
8 January 8th, 2016, at 2:09 p.m.?

9 **A.** I see it.

04:27:28 10 **Q.** It says, "Late lunch today. Jerry, late lunch. Was  
11 on a tour. I'll be back at 3:15," correct?

12 **A.** Correct.

13 **Q.** So it shows you leaving at 2:09 p.m. and it shows you  
14 won't be back until more than an hour later, correct?

04:27:41 15 **A.** That's correct.

16 **Q.** All right.

17 MS. VALDERRAMA: May I approach?

18 THE COURT: Yes, you may approach.

19 MS. VALDERRAMA: Thank you, Judge.

04:29:13 20 BY MS. VALDERRAMA:

21 **Q.** This is 122. Would you take a look at what the court  
22 reporter has -- I'm sorry -- what is marked as  
23 Exhibit 122, Defendant's Exhibit Number 122. Just let me  
24 know when you finish, Ms. Shelby.

04:33:52 25 **A.** Okay.

1 Q. All right. So if you go to the very beginning of this  
2 e-mail exchange, it appears that there is an issue with a  
3 tenant named Ann Thomas, correct?

4 A. Yes.

04:34:06 5 Q. All right. And Ann Thomas, going back until  
6 apparently around November 19 of 2015, which is the  
7 second-to-last page of the exhibit, is asking you -- she  
8 is asking you for a lease, and you say, "My apologies," at  
9 4:34 p.m., "I'll have it over to you tomorrow."

04:34:35 10 Do you see that?

11 A. I do.

12 Q. All right. And then apparently, just for some reason,  
13 she follows up with you on December 7 because she doesn't  
14 have it yet. Do you see that?

04:34:45 15 A. December 7th?

16 Q. Yes. It's the e-mail above.

17 A. Are you starting from the bottom page or the top page?

18 Q. I'm starting from the back because that's the  
19 beginning of the discussion. Let's start at the  
04:34:59 20 beginning.

21 A. Okay. Yes. I see that.

22 Q. All right. And then it's followed up with an e-mail  
23 from Ms. Thomas to you on Wednesday, December 9, at  
24 6:49 p.m. It's from her to you. You didn't send it. She  
04:35:28 25 sent it to you. And she also sent it to Lynn Dockall, who

1 is one of the -- one of her colleagues, and she sent it to  
2 Leasing@BoxerRetail.com. So she sent it to where it would  
3 draw the attention of somebody else, correct?

4 **A.** Uh-huh. Yes. I'm sorry.

04:35:51

5 **Q.** It, in fact, did draw the attention of Alex Kakhnovets  
6 on December 9 at 6:00 p.m. He e-mails Jerry Watson and  
7 says, "Follow up personally and let's discuss tomorrow,"  
8 correct?

9 **A.** Yes.

04:36:02

10 **Q.** And you are not on that particular e-mail chain  
11 because that's something that is as a result of it having  
12 been sent to Leasing@BoxerRetail.com?

13 **A.** Correct.

04:36:18

14 **Q.** So then if you move up, Jerry Watson then tells Alex  
15 Kakhnovets on Wednesday at 8:49 -- now, Alex is the senior  
16 manager, and Jerry is your immediate supervisor. He says,  
17 "I'll call the tenant in the morning and schedule some  
18 time with you," correct?

19 **A.** Yes.

04:36:31

20 **Q.** And you are not on that e-mail either?

21 **A.** No.

22 **Q.** All right. Then on the next page, Jerry Watson sends  
23 to you on December 10th the entire e-mail chain so you can  
24 see what has been happening with this particular tenant,  
25 correct?

04:36:48

1 He says, "Hi, Sherry. I spoke with Ann. And as you  
2 know, her delay in getting renewal documents started long  
3 before our relocation project on 12-3-15. Let's make sure  
4 we handle her with kid gloves to turn her around. I  
5 suggest hand-delivering her the renewal docs. If she is"

04:37:07

6 -- I need to go back -- "If she is having internet issues,  
7 let's do a paper lease. Let me know if we have any other  
8 issues that could surface between now and December 18 of  
9 2015 and please e-mail me after you have spoken to Ann

04:37:27

10 today." That's what he sends you, correct?

11 **A.** Yes.

12 **Q.** All right. And 12-18-2015, that's the day you are  
13 leaving on a two-week vacation, correct?

14 **A.** I don't know. Was it?

04:37:35

15 **Q.** Do you know what is going on on 12-18-2015? Do you  
16 remember?

17 **A.** I was -- are you asking me if I was going on vacation  
18 or are you asking me if I remember?

19 **Q.** Do you remember what is significant about the date of  
20 December 18 of 2015?

04:37:47

21 **A.** I typically did take time off around Christmas. So,  
22 yeah, I could see where I might be going on vacation, yes.

23 **Q.** All right. And so you then e-mail Ann and you say,  
24 "My apologies. I'll have this over to you tomorrow, on

04:38:05

25 November" -- I'm sorry. What did I do with it? Okay. It

1 looks like there is some duplicate here.

2 Then you say, "Sherry" -- Jerry sends it to you and  
3 then you, Sherry, you respond to him. You respond --  
4 there is communication with you and Ann on -- I'm sorry.

04:39:09

5 You forward something at that point in time on December 10  
6 to Jerry Watson that has all of those attachments.

7 Do you see that? December 10. And you copy Alex  
8 Kakhnovets.

04:39:33

9 **A.** I'm not sure. Let me see. I'm trying to figure out  
10 where you are at here. You said it had attachments?

11 **Q.** Look at -- look at the first page of Exhibit 122.

12 **A.** Okay. Yes. I see where I e-mailed Jerry and copied  
13 Alex on it.

04:40:01

14 **Q.** And in that e-mail you are telling Jerry that at 9:50  
15 a.m. you e-mailed her a copy of the lease, as well as sent  
16 her the lease in DocuSign and left her a message. That's  
17 because Jerry told you to tell him when you had responded  
18 to her, correct?

19 **A.** That's correct.

04:40:13

20 **Q.** All right. And then you go on and you say in the  
21 middle of the day -- I'm sorry. In the middle of the  
22 exhibit, "Jerry, I explained to you that I had several  
23 time-sensitive issues going on last week that I needed to  
24 get to and you said that the 1322/2400 relo project took  
25 precedence to everything."

04:40:40

1 You asked for help several times over the past month  
2 and just finally received some help with calls yesterday.

3 In the paragraph immediately preceding that, you talk  
4 about how you covered Kimberly a couple of times in  
04:40:59 5 addition to numerous tours, renewals, and general building  
6 activity and then went on Thanksgiving holiday from the  
7 25th through the 30th." Then you said, "The day after we  
8 got back from vacation you said 'Let's go now relo.' And  
9 ever since then I have been working till 7:00 to 8:00 p.m.  
04:41:17 10 most nights trying to get this done for you."

11 So it says that ever since at some point in time where  
12 you got this new project, you are all of a sudden having  
13 to work between 7:00 and 8:00 p.m., correct?

14 **A.** No. I wouldn't say every -- that that was the only  
04:41:32 15 time; but at that time, that's when I focused on that  
16 project for him. So it doesn't mean that I wasn't there  
17 working any other time. It just means that during this  
18 period of time, that was my primary focus every evening  
19 was trying to get what he was needing done for this relo.

04:41:52 20 **Q.** But the paragraph you send him says that ever since  
21 then, ever since that date, you have been working to 7:00  
22 or 8:00 p.m. at night?

23 **A.** On that project, yeah. That's exactly what I told  
24 him. I let him know that I had focused in on that project  
04:42:09 25 and that ever since he had notified me of it that I had

1 been working on it. That's what I was telling him. And I  
2 think I even go on to say, you know, haven't even had time  
3 to go to the bathroom and I rarely go to lunch, which was  
4 my testimony earlier. I'm not just sitting around wasting  
5 my time. I rarely go to lunch and I can barely get in the  
6 restroom once, maybe twice a day.

7 So I was letting him know how busy I was. I was  
8 actually pleading for help. I was actually begging them  
9 to get me some help because I was so inundated that I  
10 couldn't get my work done, and it was starting to consume  
11 me, as a result of an unhappy tenant in this particular  
12 case.

13 **Q.** You are explaining to your boss why it is that it was  
14 all right for you not to keep up with that particular  
15 tenant, correct? Didn't he say earlier that it started  
16 with -- the problem long before the relo?

17 **A.** I don't know that he said long before. I think he  
18 said it started before. That doesn't mean that she didn't  
19 ask for a renewal. This lady didn't know what she wanted  
20 to do. She wanted to expand. She wanted some possible  
21 construction. Then she didn't want it renewed. Then she  
22 wanted to move out. And so I had worked with her for some  
23 time.

24 When she finally came and said, I need the lease, it  
25 could have been -- and I don't know. It could have been a

1 day or two days or three days. It may have started  
2 before. I don't know how many days before.

3 At the time when the relo project picked up, he made  
4 that my number one priority. I couldn't be in two places  
04:43:41 5 at one time making everybody happy. So unfortunately, in  
6 this particular case, Ann got put on the back burner and  
7 we had internet issues and there were compounding issues  
8 with this particular deal that weren't normal.

9 So I was letting him know that I'm focusing in on this  
04:43:58 10 relo project. This is what I'm spending my time on. I'm  
11 not just sitting here and not taking care of my customer.

12 **Q.** The Exhibit 119, you were able to take a two-hour  
13 lunch break from 10:30 to 12:30?

14 **A.** That's for my granddaughter?

04:44:14 15 **Q.** Correct.

16 **A.** Is that the one?

17 **Q.** Correct.

18 **A.** Yes.

19 **Q.** That was the day before you were able to take a  
04:44:19 20 two-hour lunch.

21 **A.** I can't say I was gone two hours, but I wanted to  
22 allot that time just in case. But typically, when I go to  
23 a school lunch, because I go to those special occasions  
24 now, and typically they take about 45 minutes to an hour.

04:44:31 25 **Q.** So even though it says here with you telling Jerry, I



1 will be unavailable from 10:30 to 12:30, your testimony in  
2 court --

3 **A.** I did tell him that.

4 **Q.** -- your testimony in court here today is that you  
5 didn't actually spend that amount of time?

6 **A.** I'm not saying that I did or I didn't. I'm telling  
7 you that their lunchtime is only about 45 minutes. So,  
8 you know, I'm not saying that I took the full two hours,  
9 but I was letting him know that it was a possibility

10 because I don't know.

11 MS. VALDERRAMA: May I approach the witness?

12 THE COURT: You may.

13 BY MS. VALDERRAMA:

14 **Q.** Would you take a look at what has been marked as  
15 Exhibit 123, Defendant's Exhibit Number 123.

16 **A.** Okay.

17 **Q.** All right. So that's on February 5. You are going to  
18 dinner with Kristen Davis, correct?

19 **A.** Yes.

20 **Q.** It looks like you guys are going to meet up at the  
21 Saltgrass Steakhouse?

22 **A.** Yes.

23 **Q.** You are going to be there between 5:45 and 6:00 p.m.,  
24 right?

25 **A.** Yes.

1 Q. You are going to skip out early to beat the traffic?

2 A. Well, that didn't happen. I can tell you that.

3 Because I remember this. This was not long before I left  
4 from working for Boxer. And I wasn't able to get out

04:46:08

5 because I was down at 1322 Space Park, and we had to push  
6 this back. Just so you know.

7 Q. Even though it says here you are going to skip out  
8 five minutes early in black and white, as you sit here  
9 today --

04:46:22

10 A. Well, maybe we were going to try to do that, yes.

11 Q. Let me ask you a question.

12 A. It was on a Friday, wasn't it? Yeah.

13 THE COURT: I think, well, isn't it Ms. Davis who  
14 says she is --

04:46:36

15 MS. WILLS: Right. It's not you saying.

16 THE COURT: Ms. Davis is skipping out five  
17 minutes early?

18 BY MS. VALDERRAMA:

19 Q. Did you say you are going to get there. Sounds good.

04:46:42

20 You are going to be there at 5:45.

21 A. That was my intention, but that did not happen.

22 Q. So even though you have an e-mail saying you are  
23 meeting your friend at 5:45 --

24 A. I am meeting the property manager, yes.

04:46:51

25 Q. She wasn't your property manager in February, correct?

1 **A.** Well, she was the property manager I worked with for  
2 three years. Yes.

3 **Q.** In February she was no longer your property manager?

4 **A.** That's correct.

04:47:00

5 **Q.** You were meeting your friend, correct?

6 **A.** Okay. You can call it a friend if you want. That's  
7 fine.

8 **Q.** All right. Are you testifying that this is not --

04:47:12

9 **A.** I would call her a business associate. I thought  
10 maybe she was a friend, but I would call her a business  
11 associate because we do not communicate. We are not  
12 friends at this -- we have not spoken, other than one  
13 lunch after I left Boxer.

14 **Q.** All right. You did have a lunch after you left Boxer.  
15 So at this time, you will concede she was a friend?

04:47:26

16 **A.** I would say she is a business acquaintance, yeah. Did  
17 she ever come to my house? No. Have I ever been to her  
18 house? No. So --

19 MS. VALDERRAMA: May I approach, Your Honor?

04:47:55

20 THE COURT: Yes, you may.

21 BY MS. VALDERRAMA:

22 **Q.** This is 117. Would you take a look at Defendant's  
23 Exhibit Number 117, please?

24 **A.** Yes.

04:48:32

25 **Q.** Do you see that?

1 **A.** Yes.

2 **Q.** That's an e-mail on September 28, 2015, sent at  
3 2:57 p.m. from you to Jerry Watson where you are telling  
4 him you are leaving at 4:30, correct?

04:48:43 5 **A.** That's correct?

6 **Q.** All right. You say you didn't get a break at all and  
7 you have to attend to something before the end of business  
8 today. That would be 5:30, correct?

9 **A.** Correct.

04:48:52 10 **Q.** And then you get Kimberly to cover you from 4:30 to  
11 5:30?

12 **A.** That's correct.

13 **Q.** All consistent with a normal Boxer day, correct?

14 **A.** What do you mean consistent?

04:49:02 15 **Q.** The end of the day is 5:30. The end of business is  
16 5:30. If you are leaving early, you are supposed to let  
17 your supervisor know.

18 **A.** That was the standard office hours, yes.

19 **Q.** Okay. And you said you were leaving before the end of  
04:49:16 20 business today?

21 **A.** Yes. I was -- I asked for coverage, that I had  
22 something I had to attend from 4:30 to 5:30. I didn't say  
23 I wasn't coming back or that I was going to be complete  
24 with work.

04:49:29 25 **Q.** I see. Are you testifying that even though you said

1 you were leaving at 4:30, you really meant you were coming  
2 back?

3 **A.** I don't know. I'm saying I don't know. I don't even  
4 know -- to be honest, I don't remember even what I had to  
04:49:40 5 handle that particular day. But there was, obviously,  
6 something I had to do.

7 MS. VALDERRAMA: May I approach, Judge?

8 THE COURT: Yes, you may.

9 MS. VALDERRAMA: Thank you.

04:50:23 10 BY MS. VALDERRAMA:

11 **Q.** (Tendering document.)

12 **A.** Okay.

13 **Q.** All right. This is an e-mail from you to Jerry  
14 Watson. You are talking about notifying him that you are  
04:50:58 15 actually going to be there that following Saturday,  
16 correct?

17 **A.** Yes.

18 **Q.** And you are telling him that you are going to come in  
19 tomorrow to try to catch up a little?

04:51:05 20 **A.** Yes.

21 **Q.** All right. And you are notifying Mr. Watson because  
22 you don't usually come in on Saturday, correct?

23 **A.** Well, sometimes I would let him know that I was coming  
24 in. This looks like it could have had something to do  
04:51:19 25 with the Ann thing, based on the dates, because I was so

1 covered up. And I had that extra project on me with those  
2 extra buildings.

3 So I wasn't able to just dedicate my extra time to my  
4 particular assignment, my normal assignment. So I was  
04:51:33 5 getting behind. And I was letting him know, because he  
6 wasn't happy with me on that issue. But he was inundating  
7 me with work, and I could not get my head above water.

8 So normally, whereas I would have stayed in my office  
9 on my personal assignment to get caught up, I wasn't able  
04:51:54 10 to do that because I was working on that relo project.

11 **Q.** And it's the relo project that was causing you to stay  
12 as late as 7:00 or 8:00 p.m. during that time frame that  
13 began on December 3 where you wrote the e-mail on  
14 December 11th, correct?

04:52:12 15 **A.** When you say causing, there was always a reason. So,  
16 no, it was -- it was what I was working on at that time,  
17 but I can't say it's the only thing that was causing me to  
18 have to put in extra work time. There were lots of things  
19 that caused that. This just happened to be one of them  
04:52:34 20 that was over the top.

21 **Q.** Now, in the e-mail -- well, at the same time that you  
22 were being employed by Boxer Property Management  
23 Corporation as one of their leasing agents and, as you  
24 said, a top producer for them, you had another business  
04:53:18 25 going on the side, correct?

1 **A.** I wouldn't know if I would call it another business  
2 but I was a licensed real estate agent and I did have a  
3 few sales, a few residential sales that I completed.

04:53:35

4 **Q.** When you say a few residential sales, let's talk about  
5 the time frame of 2015. What was the volume of dollars  
6 you did in sales in 2015 with that business that you had  
7 on the side?

04:53:49

8 **A.** Personally, I don't know right offhand. You would  
9 have to show me what you have got there because I don't  
10 remember.

11 THE COURT: Was it more than a half million or  
12 less than a half million?

13 MS. VALDERRAMA: It was a half million, more than  
14 a half million.

04:53:56

15 THE COURT: I was asking her. Do you recall if  
16 it was more than a million or less than a million?

17 THE WITNESS: I don't know, Judge, honestly.

18 BY MS. VALDERRAMA:

04:55:34

19 **Q.** In 2015 you sold almost \$500,000 in properties; is  
20 that correct?

21 **A.** It was under. It was under.

22 THE COURT: If these numbers are correct, it's  
23 more than \$500,000.

24 BY MS. VALDERRAMA:

04:55:40

25 **Q.** It was more than \$500,000.

1 **A.** Was it? I think it's under, isn't it?

2 **Q.** If you take the 7-23-15, the 10-4-15, the 11-2-15, and  
3 the 11-17-15, it exceeds half a million.

4 **A.** Okay. I don't have a calculator.

04:55:55

5 **Q.** So that means that during the period of July, October,  
6 and November, at least, of 2015 where you sold -- that was  
7 the time frame when you sold those properties, it was  
8 actually a three-month time frame in 2015, that was the  
9 same time frame that you indicated you were working at

04:56:15

10 Boxer Property until -- from 8:00 a.m. in the morning  
11 until 8:00 p.m. at night and then working ten more hours;  
12 is that correct?

13 **A.** That's correct.

04:56:29

14 **Q.** So you are saying you didn't spend time in this -- how  
15 are you able to handle your real estate business on the  
16 side?

17 **A.** Well, when you list a property, okay, it doesn't  
18 require a lot of attention. So, typically, you are going  
19 to meet with your client on a Saturday or a Sunday,  
20 because that's when most people are off work, and snap a  
21 few pictures and it takes you about ten minutes to put it  
22 in the MLS system.

04:56:42

23 You send them their contract via DocuSign. That takes  
24 you about ten minutes to type that.

04:56:59

25 Once you put it in MLS, buyers' agents are the ones



1 that typically show the properties, and you don't really  
2 have to do anything until they send you a contract.

3 And then you forward that to your client. If they  
4 accept it, they sign it. If they don't, they reject it.

04:57:15 5 It doesn't require a lot of time. It's different than  
6 when you are representing a buyer.

7 **Q.** All right. So you are saying that the paperwork was  
8 easier and it was just -- it didn't take any time at all  
9 for you to sell these four properties to the tune of over  
10 a half a million dollars?

11 **A.** Not much time at all, actually.

12 **Q.** All right. You were a Texas Real Estate Commission  
13 broker -- I'm sorry, not a broker -- a licensed agent?

14 **A.** Yes, I am.

04:57:44 15 **Q.** You had to keep up with certain CLE responsibilities?

16 **A.** CLE?

17 **Q.** I'm sorry. Continuing education responsibilities.

18 **A.** I did.

19 **Q.** All right. And how would you do those, perform those  
20 responsibilities?

21 **A.** Continuing education?

22 **Q.** Yes, ma'am,

23 **A.** Usually on line.

24 **Q.** You would go on line and complete this?

04:58:03 25 **A.** Yeah. Yeah.

1 Q. All right. And when you went on line, what would be  
2 the date of the -- that would be shown for when you  
3 completed it?

4 A. I don't know. What do you mean the date? Whatever  
5 date --

6 Q. Well, how would you know when you had completed it?

7 A. Well, whatever it would -- I don't understand what you  
8 are asking me.

9 Q. All right. So when you completed your on-line CLE,  
10 would that then somehow show up as the date by which you  
11 had certified to do those hours?

12 A. I don't know that I would say that that was the case.  
13 What do you mean? I mean, when you completed your  
14 continuing education and you completed whatever module  
15 they had for you, whether it was some kind of test or  
16 something, typically it would print out, like, a  
17 certificate and then that would have the date; but it  
18 didn't indicate necessarily that that was the date you  
19 completed the hours because you had however much time to  
20 complete the hours.

21 When you are doing it on line, you work at your own  
22 pace. You don't have to sit down and do it all at one  
23 time. It's not like going to a class and you are there  
24 eight hours and then you leave.

25 So if you got on to an on-line system, you could work

1 on it for ten minutes and you could save your work and you  
2 could come back. You just can't take the test.

3 It doesn't require -- on-line systems doesn't require  
4 if it's -- I forget the number of hours you need for  
04:59:31 5 continuing education. Is it 15 or 30? But whatever it  
6 is, you don't actually have to spend 15 hours in the  
7 system. You just can't take your test until you have had  
8 it signed up for 15 hours.

9 So, for example, if today I signed up at 9:00 a.m. in  
04:59:50 10 an on-line class, I wouldn't have to spend 15 hours in  
11 that system. I just can't take the test until 15 hours  
12 have passed. And that's how the real estate commission --  
13 at that time, that's how they regulated things.

14 **Q.** I'm sorry. Just so I understand, if it says that you  
05:00:08 15 are supposed to be qualified for 30 hours of education,  
16 you don't actually have to study for 30 hours. You just  
17 have to log on, and then 30 hours later take the test?

18 **A.** You have to pass the module, and then you will get it,  
19 yeah.

05:00:22 20 **Q.** You don't actually have to do the work. Is that what  
21 your testimony is?

22 **A.** I'm saying that some people read faster than others,  
23 and it doesn't require that you have to be in the system.  
24 So it's not like a timed system is what I'm telling you.

05:00:35 25 So, in other words, when it signs on it doesn't --

1 it's not making you stay signed on. You just can't take  
2 the test until you have actually purchased and signed on  
3 the initial time.

4 That's not my regulation. The state regulates the  
05:00:49 5 educators. Not me. So I just went through the system the  
6 way that they required it.

7 MS. VALDERRAMA: May I approach?

8 THE COURT: Yes.

9 **A.** And also, Boxer allowed us to do that because they  
05:01:01 10 required us to have a real estate license and Boxer  
11 allowed us to do that on their time. So --

12 BY MS. VALDERRAMA:

13 **Q.** You actually had a real estate license of your own on  
14 the side and a business of your own on the side and you  
05:01:24 15 needed to keep that license up for that business, correct?

16 **A.** Actually, when I came to work for Boxer, they told me  
17 that they wanted me to have a real estate license. And I  
18 let them know then that I wouldn't come to work for them  
19 if I had to put that license in their name and that that  
05:01:43 20 was because if I had a past customer or an acquaintance  
21 that needed help with a real estate transaction, that I  
22 wanted to be able to do that. And they agreed to that.  
23 What is this disciplinary action?

24 **Q.** Would you take a look at Exhibit 126. That's a  
05:02:01 25 certificate of license history from Texas Real Estate

1 Commission. Do you see that?

2 **A.** Okay. Yes.

3 **Q.** It says there on May 12 of 2015, May 7 of 2015 --

05:02:13 4 MS. WILLS: Your Honor, we're going to object to  
5 this document. It was never even produced. They are  
6 just -- this was never even produced. They are literally  
7 just pulling things out now, a document that was never  
8 even produced in discovery.

9 MS. VALDERRAMA: Judge, it is --

05:02:26 10 MS. WILLS: And what impeachment is it? What is  
11 the purpose of this document, other than a document that  
12 they didn't produce in discovery?

13 MS. VALDERRAMA: It's a public record, Judge.

05:02:39 14 THE COURT: Normally impeachment does not need to  
15 be produced ahead of time.

16 MS. WILLS: But this is not an impeachment  
17 document, Your Honor.

18 THE COURT: Well, I'm not sure where we are going  
19 with this, but it looks like the courses that she took.

05:02:56 20 MS. VALDERRAMA: That's correct, Judge. The  
21 courses were taken in 2015 during the time that she was  
22 working for Boxer and when she described the work that she  
23 was doing for Boxer after hours.

05:03:08 24 MS. WILLS: She also testified that Boxer  
25 required her to have a real estate license and she took

1 courses and supported that license. I don't understand  
2 how this is impeachment evidence.

3 THE WITNESS: Boxer paid for this. Boxer paid  
4 for this class. They reimbursed us for our continuing  
05:03:22 5 education, and they also reimbursed us for our licensing  
6 renewals.

7 MS. WILLS: It's just -- it's improper, Your  
8 Honor. They didn't produce this during discovery, and  
9 it's not impeachment evidence.

05:03:33 10 THE COURT: I don't think they have to produce it  
11 during discovery and I --

12 MS. WILLS: So that means, Your Honor, we can  
13 just start bringing in all kind of documents?

14 THE COURT: For impeachment. For impeachment.

05:03:43 15 MS. WILLS: This is not impeachment, though, Your  
16 Honor.

17 THE COURT: Well, I don't know where we are going  
18 with it.

19 MS. VALDERRAMA: All right, Judge. I'll just  
05:03:47 20 withdraw the exhibit. She has -- we have --

21 THE COURT: You are going to withdraw the  
22 exhibit. Okay.

23 MS. VALDERRAMA: Withdraw the exhibit. She has  
24 testified already to the fact she had to do -- perform  
05:03:58 25 these hours and that she performed the hours with

1 actually --

2 THE COURT: Well, just to make sure we don't  
3 leave an ambiguity on the record, there is no disciplinary  
4 action reflected here. It's just saying that as of  
5 April 2nd of this year the following disciplinary action  
6 is shown. And then it doesn't show any disciplinary  
7 action, right?

8 MS. VALDERRAMA: No. But it goes on to identify  
9 the time that was spent certifying for courses, and I  
10 think that Ms. Shelby has already explained that she  
11 didn't actually do the hours. She just logged in, let  
12 them happen, and then took the test. That is all you  
13 need.

14 THE WITNESS: That's not what I said.

15 MS. WILLS: I agree. Your Honor, in order to  
16 clear up the record, nothing in this record shows any  
17 disciplinary action. I think that was the point Your  
18 Honor wanted to make. Although, the exhibit is being  
19 withdrawn anyway.

20 THE COURT: Okay. How close are you to being  
21 done?

22 MS. VALDERRAMA: Well, we have to talk about the  
23 other plaintiffs, Judge.

24 THE COURT: I am getting worried about -- we  
25 allotted this week for the case. I'm not confident we're

1 going to get it done this week. This is just one witness  
2 today. How many witnesses are we going to have?

3 MS. VALDERRAMA: I don't think my witnesses are  
4 going to take quite so long. The problem is, Judge, that  
5 the evidence of work is what is so nebulous and the  
6 Court -- we need to be able to present to the Court the  
7 absence of evidence of work. My witnesses are not going  
8 to take that long, but that's part of the issue that we  
9 have.

10 THE COURT: Okay. We're going to break for the  
11 day. We'll start at 9:00 tomorrow.

12 MS. VALDERRAMA: Thank you, Judge.

13 (Proceedings concluded at 5:05 p.m. and continued on  
14 Day 2.)

15 *Date: June 10, 2019*

16 ***COURT REPORTER'S CERTIFICATE***

17 *I, Laura Wells, certify that the foregoing is a*  
18 *correct transcript from the record of proceedings in the*  
19 *above-entitled matter.*

20  
21           /s/ Laura Wells          

22 *Laura Wells, CRR, RMR*  
23  
24  
25